United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

74-1901 B

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 74-1901

UNITED STATES OF AMERICA,

Appellee,

-v.-

KARL SCHWARTZBAUM,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

Volume I-Pages A-1 to A-146; Tr. 1 to Tr. 165

DE pellant

GOLDSTEIN, SHAMES & HYDE
Attorneys for Defendant-Appellant
655 Madison Avenue
New York, New York 10021
(212) TE 8-3700

PAGINATION AS IN ORIGINAL COPY

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UNITED STATES DISTRICT COURT

JUDGE PIERCE

		X
	THE UNITED STATES	
	vs.	
	SAM SHERMAN HARRY HESSEL KARL "JACK" SCHWAF	1, 2, 3 : 4 thru 6 incl. : RTZBAUM : 9 thru 12 incl. :
4)	SOL COHEN	13 :

Date Proceedings

- 6-21-73 Filed indictment. Assigned to Judge Pierce as a related matter (73 CR 257)
- 6-28-73 All Defts. (attys present) Plead not guilty.
 Released on their own recognizance. Pierce, J.
- 2-6-74 KARL "JACK" SCHWARTZBAUM-Filed deft's Memorandum of law in support of Motion fo Severance and Deft's Notice of Motion to Sever and Affidavit.
- 3-13-74 PTC held-all four (4) deft's motions for severance is granted. Each Deft will be tried separately beginning with HESSEL on 3-25-74 at 9:30. Deft COHEN to follow immediately, then SHERMAN and finally SCHWARTZBAUM. ----- PIERCE, J.
- 3-22-74 SAM SHERMAN-Deft. with his Atty present, withdraws his plea of NOT GUILTY and pleads GUILTY to Count One (1) only. Deft. wavers pre-sentence report and is to be sentenced this day. Sentence-Deft. atty. present, is to pay a fine to U.S. in sum of \$5,000 on Count One (1). Fine is to be paid by April 9, 1974. On motion of deft's counsel, open counts 2 & 3 are dismissed with consent of Govt. Pierce
- 3-25-74 SOL COHEN-Deft. atty present, withdraws his plea of NOT GUILTY and pleads GUILTY to Count 13, as charged. P.S.I. ordered. Sentence May 9, 1974 at 4:30.

HARRY HESSEL-Deft. his atty present, Robert J. Mc-Guire, withdraws his plea of NOT GUILTY, and pleads GUILTY to Count 4. PSI ordered. Sentence 5-14-74 at 4:30.

PIERCE, J.

4-1-74 KARL "JACK" SCHWARTZBAUM-Jury trial begun as to this Deft. only.

RELEVANT DOCKET ENTRIES

- 4-2-74 KARL "JACK" SCHWARTZBAUM Trial continued.
- 4-3-74 KARL "JACK" SCHWARTZBAUM Trial continued. Govt's motion to dismiss Count 12 GRANTED.
- 4-4-74 KARL "JACK" SCHWARTZBAUM Trial continued. Judge charges Jury. Jury begins deliberations. Jury returns with a Verdict. Deft found GUILTY on each of Counts 9, 10 & 11. P.S.I. ordered Sentence 5-6-74 at 4:30 P.M. Room # 2804. Deft. comt'd. R.O.R.-PIERCE,
- 4-5-74 KARL "JACK" SCHWARTZBAUM-Filed Affice it, Order & Application, ordering that Harry Jaffee to testify and produce evidence at the trial herein PIERCE, J.
- 4-26-74 KARL "JACK" SCHWARTZBAUM Filed Notice of Motion and Affdvt of William Esbitt for an order setting aside the verdict against the Deft & granting a new trial.
- 4-26-74 KARL "JACK" SCHWARTZBAUM Filed Memorandum of Law on behalf of Deft.
- 5-14-74 KARL "JACK" SCHWARTZBAUM Filed Memorandum Order
 The Court concludes that it would not serve the interest of justice to grant a new trial & accordingly
 the motion is denied. So Ordered Pierce J. (mailed
 notice)
- 5-21-74 KARL "JACK" SCHWARTZBAUM Filed Notice of Motion & Affidavit in support. Re: Set aside the verdict & new trial of new discovered evidence. ret. 5/29/74
- 5-21-74 KARL "JACK" SCHWARTZBAUM Filed Memorandum of Law in support of deft's. motion for a new trial on the ground of newly discovered evidence.
- 6-11-74 KARL "JACK" SCHWARTZBAUM Filed notice of appeal from the denial of deft's. motions to set aside the verdict and granting a new trial and from the final judgment.

 Mailed notice to Karl "Jack" Schwartzbaum, 5 Grenwolde Drive, Kings Point, N.Y., U.S. Atty.
- KARL "JACK" SCHWARTZBAUM Filed JUDGMENT (#74,502)

 (Atty Present) It is adjudged that the deft. pay a fine to the United Stat-s in the sum of ONE THOUSAND (\$1,000) DOLLARS on each of counts 9, 10 and 11.

 Total fine of THREE THOUSAND (\$3,000) DOLLARS is to be paid or deft. is ordered to stand committed until fine is paid or he is otherwise discharged by due course of law. The order that the deft. stand committed is stayed until July 8, 1974. PIERCE, J.
- 6-27-74 KARL "JACK" SCHWARTZBAUM-Filed Memo Endorsement on deft's notice of motion filed on 5-21-74. Deft's motion for a new trial is denied. So Ordered PIERCE, J.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.

INDICTMENT

SAM SHERMAN, HARRY HESSEL, KARL "JACK" SCHWARTZBAUM and SOL COHEN. 73 Cr. 6/6

Defendants.

COUNTS ONE THROUGH THREE

The Grand Jury charges:

On or about the dates hereinafter set forth, in the Southern District of New York, SAM SHARMAN, the defendant, being an employer in an industry affecting interstate and foreign commerce, to wit, the fur industry, did unlawfully, wilfully and knowingly pay and deliver and agree to pay and deliver a thing of value, to wit, money in the amounts hereinafter set forth, to the hereinafter named representative of the Furrier's Joint Council, a labor organization which represented the employees of the said defendant:

Count	Approximate Date	Amount	Union Representative		
1	The first half of 1969	\$375	Charles Hoff, Al Gold, and Clifford Lageoles		
2	The second half of 1969	\$375	Charles Hoff, Al Cold, and Clifford Lageoles		
3	The first half of 1970	\$375	Charles Hoff, Al Gold, and Clifford Lageoles		

(Title 29, United States Code, Section 186(a))

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INDICTMENT

COUNTS FOUR THROUGH EIGHT

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern tistrict of New York, HARRY HESSEL, the defendant, being an employer in an industry affecting interstate and foreign commerce, to wit, the fur industry, did unlawfully, wilfully and knowingly pay and deliver and agree to pay and deliver a thing of value, to wit, money in the amounts hereinafter set forth, to the hereinafter named representatives of the Furriers Joint Count, a Labor organization which represented the employees of the said defendant:

Count	Date (In or About)	Amount	Union Representative
4	The first quarter of 1969	\$ 375	Charles Hoff, Al Gold, & Clifford Lageoles
5	The second quarter of 1969	\$ 375	Charles Hoff, Al Gold, & Clifford Lageoles
6	The third quarter of 1969	\$ 375	Charles Hoff, Al Gold, & Clifford Lageoles
7	The fourth quarter of 1969	\$ 375	Charles Hoff, Al Gold, & Clifford Lageoles
8	The first quarter of 1970	\$ 375	Charles Hoff, Al Gold, & Clifford Lageoles.

(Title 29, United States Code, Section 186(a))

INDICTMENT

COUNTS NINE THROUGH TWELVE

The Grand Jury further charges:

On or about the dates hereinafter set forth, in the Southern District of New York, KARL "JACK" SCHWARTZBAUM, the defendant, being an employer in an industry affecting interstate and foreign commerce, to wit, the fur industry, did unlawfully, wilfully and knowingly pay and deliver and agree to pay and deliver a thing of value, to wit, money in the amounts hereinafter set forth, to Charles Hoff, an officer of the Furriers Joint Council, a labor organization which represented the employees of the said defendant:

Count	Date (In or About)	Amount
9	The first third of 1969	\$ 150
10	The second third of 1969	\$ 150
11	The last third of 1969	\$ 150
12	The first third of 1970	\$ 150
	(Title 29, United States Code,	Section 186(a))

COUNT THIRTEEN

The Grand Jury further charges:

In or about 1969, in the Southern District of New York, SOL COHEN, the defendant, being an employer in an industry affecting interstate and foreign commerce, to wit, the fur industry, did unlawfully, wilfully and knowingly pay and deliver and agree to pay and deliver a thing of value, to wit, One Hundred Fifty Dollars (\$150) to Al Gold, an employee of the Furriers Joint Council, a labor organization which represented the employees of the said defendant.

(Title 29, United States Code, Section 186(a))

NOTICE OF MOTION FOR NEW TRIAL

UNITED	STATES	DIST	TRIC	T CO	DURT	
SOUTHER	RN DIST	RICT	OF	NEW	YORK	
						х
UNITED	STATES	OF A	AMEF	RICA,		

Plaintiff,

NOTICE OF MOTION

-against-

73 CR 616

KARL "JACK" SCHWARTZBAUM,

Defendant.

SIRS:

PLEASE TAKE NOTICE that upon all the proceedings heretofore had herein and upon the annexed affidavit of WILLIAM ESBITT, sworn to the 26th day of April, 1974, and the memorandum of law submitted herewith, a Motion will be made before the Honorable Lawrence W. Pierce, United States District Judge for the Southern District of New York, in Room 2804 of the United States Courthouse, Foley Square, New York at 4 P.M. on May 6, 1974 for an Order pursuant to Rule 33 of the Federal Rules of Criminal Procedure setting aside the verdict against the defendant and granting a new trial and for such other and further relief as to the Court may seem just and proper.

DATED: New York, New York April 26, 1974

Yours, etc.

TO:

HON. PAUL CURRAN, United States Attorney WILLIAM ESBITT
Attorney for Defendant
122 East 42nd Street
New York, New York 10017
(212) OXford 7-0133

V. T. FRYMAN, JR., ESQ., Assistant United States Attorney

AFFIDAVIT IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
x
UNITED STATES OF AMERICA,
Plaintiff,

-against-

AFFIDAVIT

KARL "JAC K" SCHWARTZBAUM,

Defendant.

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

WILLIAM ESBITT, being duly sworn, deposes and says:

- 1. I am the attorney for the defendant herein and I am submitting this affidavit in support of the defendant's motion herein for a new trial.
 - The grounds for this application are as follows:

 (a) The Court's permitting the government to refresh the recollection of the government's key witness by the use of a self-serving memorandum prepared by Mr. Fryman. Annexed hereto and marked Exhibit A is a photocopy of government's exhibit GX3511, which is a memorandum dated March 26, 1974 (less than a week before the trial) relating to an interview of the government's key witness, one Jack Glasser.

- (b) The Court's refusal to permit defense counsel to call as a witness and interrogate Mr. Fryman, the Assistant United States Attorney, who was prosecuting the case for the government.
- (c) The government's failure to inform the Court and the jury of false testimony by the chief witness, Jack Glasser.
- 3. The Court will recall that the government produced only one witness to testify to the crimes charged in the indictment. That witness, of course, was Jack Glasser and it is perfectly obvious that the credibility of this witness is as crucial to the government's case as his lack of credibility is to Schwartzbaum's defense. Not a single witness produced by the government testified to any conversation between the defendant and Glasser or between Glasser and Charles Hoff; nor was any witness produced to testify as to any alleged payments between Schwartzbaum and Glasser or payments by Glasser to Hoff.
- 4. The first witness produced by the government was Mr.

 Bittman, who was a former employee of the defendant and who

 testified that the defendant did engage in importing (a fact not

 denied or challenged by the defendant); that the defendant engaged

 in contracting (a fact not denied or challenged by the defendant);

 and who testified to a circuitous scheme for the payment for

 contracting work which was intended to conceal from the Union the

 use of non-union contractors by the defendant (and this fact was

also neither challenged nor denied by the defendant). Not only did the witness Bittman not support the government on the issues of this prosecution but in reply to questions by Mr. Fryman, the witness denied that he ever saw any payments by the defendant to Glasser but also denied that he knew of any payments.

- 5. Witness Jaffe, a former union employee, testified that he had received \$50 payments from Glasser who allegedly told him it was coming from Schwartzbaum. Jaffe testified that he never received any money from Schwartzbaum and, of course, had no knowledge of his own as to any payments by Schwartzbaum to Glasser with respect to the allegations in the indictment.
- 6. The third witness (exclusive of Glasser) was a Mr. Chambers, who was a vice president of the Chase Manhattan Bank and the loan officer in charge of the bank loans to the Schwartzbaum firm. He testified that he had a meeting with Schwartzbaum at Schwartzbaum's request the day after Schwartzbaum pleaded not guilty and he testified that Schwartzbaum told him that he "paid the \$600". Apparently the reference to the \$600 alleged in the four counts of the indictment. This witness had prepared a memorandum of his meeting with Schwartzbaum which refreshed his recollection as to his conversation with Schwartzbaum. However, in that memorandum he admitted that his recollect of the conversation with Schwartzbaum was completely in error when he stated in the memorandum that Schwartzbaum told him "he had testified before the grand jury on April 2, 1973". Although Mr.

A 10

Chambers admitted this substantial discrepancy, he still stuck to his story that Schwartzbaum a day after he had pleaded not guilty had told him that he "paid the \$600". Of course, this witness also had no knowledge of the conversation between Schwartzbaum and Glasser, between Glasser and Hoff, and, of course, had no knowledge of any payments made.

7. The foregoing makes clear the vital importance to the defendant to establish a lack of credibility of the witness Glasser.

The unreliability of this witness's testimony is borne out by the following excerpts from his testimony and points up the reasons why Mr. Fryman should not have been permitted to use Government Exhibit GX3511 to refresh Glasser's recollection and why the defense should have been permitted to call Mr. Fryman as a witness.

THE IMPROPER USE OF GOVERNMENT EXHIBIT GX3511

8. One of the crucial issues in this prosecution was whether or not Glasser had told Schwartzbaum the name of the Union official (Hoff) who gave the okay. On direct examination by Mr. Fryman, Glasser testified that a day or two after his first meeting with Hoff, he told Schwartzbaum that he had the okay from Charlie Hoff. (R.66)

This testimony is significant in the light of the subsequent denials by Glasser that he ever told Schwartzbaum of

this fact and in the light of the memorandum (Exhibit A) prepared by Mr. Fryman and improperly used by him to rehabilitate the government's key witness, without whose testimony there could be no indictment and no conviction.

- 9. Although Glasser testified to the above on Monday afternoon on direct examination, on Tuesday morning on cross examination, he completely repudiated his testimony and established beyond any doubt the unreliability of his entire testimony. Thus in his first response on cross examination, Glasser testified as follows: (R.192,193):
 - "Q. Mr. Glasser, you testified yesterday that you actually told Mr. Schwartzbaum the name of the union official who gave the okay.
 - A. To Mr. Schwartzbaum specifically, Mr. Hoff?
 - Q. Yes.
 - A. No, I am not sure that I did.
 - Q. And it could be that you didn't tell it to him?
 - A. Possibly that I didn't tell it to him, that it was Mr. Hoff, yes."
 - 10. Glasser also admitted that his notes did not make a single reference to having told Schwartzbaum the name of the union official (R.194); that he did not tell Mr. Hinckley about it (R.194); that he didn't tell the Grand Jury (R.193), or testify to that fact in the earlier trial against the union officials (R.193).

- 11. Prior to trial, Mr. Sabetta furnish defense counsel with 3500 material including GX3511 which purports to be a copy of a file memo prepared by Mr. Fryman of an interview conducted by Mr. Fryman and Mr. Sabetta of witness Glasser on Tuesday, March 26, 1974 less than a week prior to the commencement of this trial.
- 12. In the light of this exhibit, the testimony of Mr. Glasser is directly contradictory:
 - "Q. *** Did you tell Mr. Sabetta or Mr. Fryman that you told him [Schwartzbaum] the name of the offical?
 - A. No, I did not.

* * * * *

- Q. You never told Mr. Sabetta or Mr. Fryman That you had told him the name of the official?
- A. No. I did not.
- Q. You say that under oath?
- A. Yes. (R.195)

* * * * *

- Q. And you were interviewed last week?
- A. Yes.
- O. This past week?
- A. Yes.
- Q. Did you tell him at that time?
- A. I was never asked that question.

- Q. And you never volunteered the answer?
- A. Never volunteered it. I never thought about it.
- Q. You never thought about it and nobody ever asked you the question?
- A. That is correct. (R.197).

* * * * *

- Q. Did you have any other interviews with Mr. Sabetta and Mr. Fryman before yesterday?
- A. Oh, yes.
- Q. In preparation for today's trial?
- A. For today's trial, no.
- Q. Never did?
- A. Not that I recall, no." (R.211)
- 13. At this juncture of the trial, and on the issue of whether Glasser told Schwartzbaum about Hoff, Glasser's testimony is overwhelming that he not only didn't tell Schwartzbaum, but also that he didn't testify to that fact to the Grand Jury or at the prior trial, and never told Prosecutors Hinckley, Sabetta or Fryman.

And on re-direct, persistent efforts by Mr. Fryman to induce the witness to testify as he wanted him to was unavailing:

- "Q. Did you meet with Mr. Sabetta and me the day you returned?
 - A. The day we returned, yes.

- Q. Was that in my office?
- .A. That was in your office, Mr. Fryman's office.
- Q. That morning that we met, was there any discussion of Mr. Schwartzbaum?
- A. The answer is no. You had indicated to me that he was sick and that there would be a postponement of his issue.
- Q. Do you recall everything that was discussed in that session that morning? How long did that session last?
- A. Until about 1 o'clock.
- Q. Do you recall when it began?
- A. at 10:30, 11.
- Q. Were there a number of subjects discussed that morning?
- A. There were a number of subjects discussed.
- Q. Do you recall now everything that was said in that session?
- A. More or less, yes." (R.221)
- "Q. Do you recall everything that was said about Mr. Schwartzbaum?
 - A. Well, outside of the fact that he was not going to come up because of illness, I don't recall any discussion on Mr. Schwartzbaum at that particular time.
- Q. Mr. Glasser, I show you a document that has been marked Government's Exhibit 3511 for identification, I ask if that refreshes your recollection about --
- MR. ESBITT: I'd like a voir dire with respect to this, your Honor." (R.222)

14. In desparation, Mr. Fryman showed Glasser Exhibit 3511 to refresh his recollection to which defense counsel objected (R.222). However, the Court permitted the witness to read the Exhibit and Glasser then stated that it did refresh his recollection In a voir dire examination, Glasser admitted that he had never before seen the document.

On a renewal of the objection, the objection was sustained but after a conference in his Chambers, the Court reversed itself and overruled the objection (R.223-228).

- 15. To make absolutely certain that the witness would understand exactly what Mr. Fryman wanted him to may, Mr. Fryman asked him to read the last paragraph of the first page of the Exhibit and then asked him the following leading question (R.228):
 - "Q. Did you mention Mr. Hoff's name in that second conversation?

Although defense counsel's objection was sustained, the message to Glasser was now clear and he so testified: (R.229)

"A. I came back to Mr. Schwartzbaum and I said,
I have had a conversation with Mr. Hoff. He
has said okay, you can go ahead and do it."

16. The overruling of defendant's objection to the use of this memo, after defendant's objection had been originally sustained (R.227) and permitting Mr. Fryman to use this memo in the manner that he did constituted substantial error and raises a serious question as to the motive for the existence of this memo.

REFUSAL TO PERMIT DEFENSE TO CALL MR. FRYMAN AS A WITNESS.

- 17. After the completion of the government's case, the defense called Mrs. Schwartzbaum to testify to the fact that she and defendant had spent Christmas week 1968 and 1969 in Florida to counteract Glasser's testimony that he had received money and liquor from the defendant during Christmas week 1968 and 1969.

 (R.70,73).
- 18. Defense counsel then requested a conference in the robing room at which time he announced that he would call Mr. Fryman as his witness. (R.378).

Counsel for defendant pointed out to the Court (R.378-387) that in view of the affirmative statements by Glasser which were contrary to the statements in Mr. Fryman's memo (GX3511), it was essential to ascertain who was telling the truth, Mr. Fryman or Mr. Glasser. And this is particularly so since by using his file memorandum to refresh the witness's recollection, he is representing to the Court that the file memo which he dictated is a truthful memorandum.

- 19. Despite the fact that the witness, Glasser, testified under oath the he never told Mr. Fryman or Mr. Sabetta that he had told the defendant the name of Hoff (R.195), Mr. Fryman's exhibit represents to the Court that Glasser testified falsely. Not only does this contradiction and others entitled defendant to question Mr. Fryman under oath before the jury, but it raises a more serious question as to whether an Assistant United States Attorney is obligated to advise the Court and the Jury about the falsity of the witness's sworn testimony.
- 20. In addition, the unusual circumstances of the preparation of GX 3511 adds to the defendant's right to question Mr. Fryman. These circumstances include the following:
 - (a) Prior to the preparation of GX3511 by Mr. Fryman, there was no record in the file of Glasser having told anyone that he mentioned Hoff's name to defendant.
 - (b) The government knew that it was important to their case to establish this fact.
 - (c) Hinckley's notes and Sabetta's notes and Glasser's notes did not disclose this fact.
 - (d) Glasser did not testify to this fact before the Grand Jury or in the first trial.
 - (e) Never before in this entire investigation had an interview of any witness been reported for the "file" as was done in GX3511.
 - (f) Mr. Fryman had interviewed witness Bittman and witness Chambers but no "file" memo was prepared.
 - (g) For the first time anywhere appears in GX3511 the vital fact "Glasser told Schwartzbaum that Hoff said okay".
 - (h) This exhibit is used to "refresh the recollection" of Glasser to a fact which he had just denied under oath.

21. In the light of these unusual circumstances and in the light of the use to which Exhibit GX3511 had been used by Mr. Fryman, it seems clear that the Court should have granted defendant's request to call Mr. Fryman as a defense witness. Nor would that happening interfere with the government's handling of the prosecution, for defense counsel agreed at once to Mr. Fryman's request to have Mr. Sabetta pursue cross and put in exhibits and take over the prosecution. (R.384).

GOVERNMENT COUNSEL FAILED TO INFORM THE COURT AND JURY OF THE FALSITY OF GLASSER'S TESTIMONY.

- 22. Government Exhibit ĜX3511, which purports to be a file memo of an interview of Glasser by Mr. Fryman contains two statements which Glasser denied he told Mr. Fryman and Mr. Sabetta
 - (a) "Q. Did you tell them (Fryman and Sabetta) that you had discussed contracting with Mr. Hoff?
 - A. I don't think that ever was brought up. I don't recall that question being brought up." (R.187a)
 - (b) "Q. You never told Mr. Sabetta or Mr. Fryman that you had told him (Schwartzbaum) the name of the official?
 - A. No, I did not.
 - Q. You say that under oath?
 - A. Yes. (R.195).

* * * * * * *

- "Q. And you were interviewed last week?
- A. Yes. Q. This past week? A. Yes.
- Q. Did you tell him at that time?
- A. I was never asked that question.
- Q. And you never volunteered the answer?

- A. Never volunteered it. I never thought about it." (R.197)
- were not true, then Mr. Fryman misrepresented the facts of that interview with Glasser to the Court. If the statements are true, and Glasser did make these statements to Mr. Fryman and Mr. Sabetta, then they were both under a duty and obligation to disclose Glasser's untruthful testimony to the Court and jury. Their failure to do so constitutes substantial error and requires the granting of a new trial.
- 24. For the reasons set forth above, it is respectfully submitted that the interests of justice require that the verdict be set aside and a new trial be granted.

WILLIAM ESBITT

SWORN TO BEFORE ME THIS

26th DAY OF APRIL, 1974

ROSE ROSATI
LIGITARY FURLIO, Etals of New York
No. 31-0650050
Qualified in New York County 7 (
Commission Express March 20, 10—7 (

GX 3511

IR:ml

FILE

March 25, 1974

V. T. FRYMAH, JR.

UNITED STATES V. KARL "JACK" SCHWARTZEAUM, 73 CT. 616

This morning John Sabetta and I interviewed Jack Glasser in my office; also present during most of the interview was Mrs. Glasser.

In 1968 Mr. Glasser was the labor adjuster of the Associated Fir Mamufacturers, Inc., assigned to K. J. Schwartzbaum, Inc., owned by Karl "Jack" Schwartzbaum. In the Spring of 1968, probably April I May, Schwartzbaum telephoned Glasser and asked him to come to his shop.

When Glasser arrived at the shop, Schwartzbaum took him into a small private office and closed the door. Schwartzbaum then told Glasser that his firm was "contracting" out work to some non-union shops and "importing" garments from some non-union shops in Camada. He continued that he did not want to increase the number of workers in his shop. He told Glasser that he would like to do "contracting" and "importing" without having any headaches from the union, and Schwartzbaum asked Glasser if he could get it okayed. Glasser said that he would let him know.

Shortly thereafter, Glasser met Charles Hoff. He told Roff that Schwartzbaum wanted approval to give out "contracting" and to import garments from Canada. Hoff told Glasser to tell Schwartzbaum to so shead and do it.

After meeting Hoff, Glasser went back to Schwartzbaum's shop, again Schwartzbaum took Glasser into the small private office and shut the door. Glasser told Schwartzbaum that Hoff sold okay. Schwartzbaum then took \$300 from his pocket and gave it to Glasser. He told Glasser that he would pay \$900 for the year in three payments of \$300. Glasser them left. Shortly thereafter he met Hoff and gave him \$150; he told loff that the money was from Schwartzbaum.

VIF, JR:ml

MENO TO FILE

- 2 -

The second payment from Schwartzbaum was probably made in July, 1968. Again Schwartzbaum telephoned Glasser; Schwartzbaum gave Glasser \$300 in his private office; and Glasser gave Hoff \$150 telling Hoff that the money was from Schwartzbaum. The third payment of \$300 occurred in December, 1968 and the same pattern was followed as for the second payment. In addition Schwartzbaum gave Glasser two bottles of whiskey as a Christmas present.

In 1969, probably in July, Schwartzbaum telephoned Glasser and asked him to come to his shop. Schwartzbaum told Glasser that he wanted to continue the payments as in 1968. He then gave Glasser \$300 on three separate occasions: the first probably in July; the second probably in September or October; and the third in December. Glasser gave Hoff half of each payment in the same manner as in 1968.

Also during 1969 Glasser visited the Schwartzbaum shop with Harry Jaffee, the union business agent, on a routine labor matter. While there Jaffee asked a number of questions about several coats in the shop which had been manufactured elsewhere. Glasser and Jaffee left the shop and went to the lobby of the building where Glasser asked Jaffee to wait for him. Glasser then returned to the Schwartzbaum shop. He told Schwartzbaum that he thought that they should take care of Jaffee. Schwartzbaum then gave Glasser \$100 and told him to give it to Jaffee. Glasser met Jaffee in the lobby and gave him the \$100 telling him that the money was from Schwartzbaum.

VIF, JR

AFFIDAVIT OF V. THOMAS FRYMAN, JR. IN OPPOSITION TO MOTION

VTF, Jr.:slc 73-0753 D-75

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

KARL "JACK" SCHWARTZBAUM.

AFFIDAVIT OF V. THOMAS FRYMAN, JR.

73 Cr. 616 (LWP)

Defendant.

STATE OF NEW YORK)
: ss.:

V. THOMAS FRYMAN, JR., being duly sworn, deposes and says:

- 1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I served as the government's trial counsel in this proceeding, and I make this affidavit in opposition to defendant's motion for an order setting aside the verdict against defendant and granting a new trial.
- fendant union fur manufacturers—Sam Sherman, Harry Hessel,
 Karl "Jack" Schwartzbaum, and Sol Cohen—made payments to
 officials of the union that represented their employees, the
 Furrier's Joint Council. The government alleged that the
 payments by all four defendants were made through Jack Glasser,
 a labor adjuster for the Associated Fur Manufacturers', Inc.
 On motion of the defendants and without government opposition
 the Court ordered that the defendants be tried separately.
 The separate trials of Sam Sherman, Harry Hessel, and Sol
 Cohen were scheduled for the week of March 25, 1974. The

trial of defendant Schwartzbaum was scheduled to begin on Monday, April 1, after his counsel represented to the Court that the counsel's doctor had directed him not to participate in a trial until that date.

73-0753 D-75

- 3. Jack Glasser and his wife came to New York on March 20, 1974, from their home in Miami, Florida, to meet with John C. Sabetta, an Assistant United States Attorney for the Southern District of New York, and me in advance of his expected testimony at the four trials described above. When he arrived Mr. Sabetta and I informed Mr. Glasser that there would not be a Sherman trial since Mr. Sherman's attorney had informed us that his client would plead guilty. On Friday afternoon, March 22, 1974, I was present in Mr. Sabetta's office when Mr. Hessel's attorney and Mr. Cohen's attorney telephoned him and informed him that their clients would also plead guilty. Mr. Glasser was also present in Mr. Sabetta's office at that time. Mr. Sabetta and I then informed Mr. Glasser that we would contact him the following week at the apartment where he was staying in New York if it appeared that the Schwartzbaum trial was going ahead the following Monday and his testimony required.
- 4. Early Tuesday morning, March 26, 1974, I met with Mr. Sabetta to set up a schedule for preparation for the Schwartzbaum trial. We decided to make an appointment to meet with Mr. Glasser on Wednesday, March 27, and Mr. Sabetta agreed to telephone Mr. Glasser about this. Shortly after

meeting with Mr. Sabetta, I received a telephone dall from the receptionist in the United States Attorney's Office stating that Mr. and Mrs. Glasser were in the reception room. When I went out to meet them, Mr. Glasser said that Mrs. Glasser had a sore throat and that they wanted to return to Florida that day. Mr. and Mrs. Glasser came to my office, and Mr. Sabetta joined us. We decided that the Glassers would return to Florida that day, and, if the Schwartzbaum trial were to proceed the following Monday, Mr. and Mrs. Glasser would fly to New York from Florida the preceding Sunday morning and meet with Mr. Sabetta and me on Sunday afternoon. Mr.

73-0753 D-75

and Mrs. Glasser then made plane reservations to return to Florida on that Tuesday afternoon.

Glasser was in my office on that Tuesday, Mr. Sabetta and I asked him certain questions about the counts of the indictment naming Mr. Schwartzbaum. Mr. Glasser described his first meeting with Mr. Schwartzbaum, his meeting shortly thereafter with Charles Hoff of the Furrier's Joint Council, and his second meeting with Mr. Schwartzbaum. With respect to his meeting with Mr. Hoff, Mr. Glasser stated that he informed Mr. Hoff of Mr. Schwartzbaum's desire for approval to give out "contracting" and to import garments. With respect to his second meeting with Mr. Schwartzbaum, I asked Mr. Glasser what he had said. He replied that he had told Mr. Schwartzbaum that Mr. Hoff said okay. I was aware that this aspect of that second meeting had not been brought out in Mr. Glasser prior testimony, and I asked him if he was certain that he

had mentioned Mr. Hoff's name to Mr. Schwartzbaum at that meeting. Mr. Glasser again replied that he had told Mr. Schwartzbaum that Hoff said okay. He repeated this answer to a further question by Mr. Sabetta about what he had said in that second meeting with Mr. Schwartzbaum.

6. Neither Mr. Sabetta nor I made any notes during this meeting with Mr. Glasser. During the evening of Tuesday, March 26, I typed a draft of a memorandum concerning our meeting with Mr. Glasser. A copy of the draft which I typed is attached hereto as Exhibit 1. The following morning I gave the draft to Mr. Sabetta to review. Later that day Mr. Sabetta returned the draft to me and stated that it accurately reflected his recollection of our meeting with Mr. Glasser. I then had the draft retyped, and a copy of the final

VTF, Jr.:slc 73-0753 D-75

memorandum was marked as GX 3511 and given to Mr. Schwarzbaum's counsel on Thursday, March 28, 1974.

7. The scheduled meeting with Mr. Glasser on Sunday, March 31, 1974, to discuss his testimony at the Schwartzbaum trial never occurred. Mr. Glasser telephoned me on Saturday, March 30, and informed me that Mrs. Glasser was ill and that they could not fly to New York on Sunday. Mr. Glasser did not arrive in New York until late Monday morning after the trial had begun.

V. THOMAS FRYMAN, JR.
Assistant United States Attorney

Sworn to before me this

day of May, 1974.

JEANETTE ANN GRAYEB
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County

Gualified in Kings County Certificate filed in New York County Commission Expires March 30, 1975

A

MEMORANDUM TO Files, United States v. Karl "Jack" Schwartzbaum, 73 Cr. 616

FROM V. T. Fryman, Jr.

DATE March 26, 1974

SUBJECT Interview with Jack Glasser

This morning John Sabetta and I interviewed Jack Glasser in my office; also present during most of the interview was Mrs. Glasser.

In 1968 Mr. Glasser was the labor adjuster of the Associated Fur Manufacturers, Inc., assigned to K. J. Schwartzbaum, Inc., owned by Karl & "Jack" Schwartzbaum. In the spring of 1968, probably April or May, Schwartzbaum telephoned Glasser and asked him to come to his shop.

When Glasser arrived at the shop, Schwartzbaum took him into a small private office and closed the door. Schwartzbaum then told Glasser that his firm was "contracting" out work to some non-union shops and "importing" garments from some non-union shops in Canada. He continued that he did not want to increase the number of workers in his shop. He told Glasser that he would like to do "contracting" and "importing" without having any headaches from the union, and have Glasser if he manned could get it okayed. Glasser said that he would let him know.

Shortly thereafter, Glasser met Charles
Hoff. He told Hoff that Schwartzbaum wanted
approval to give out "contracting" and to import
garments from Canada. Hoff told Glasser to tell
Schwartzbaum to go ahead and do it.

After meeting Hoff, Glasser good back to Schwartzbaum's shop. Again Schwartzbaum takes Glasser into the small private office and shuts the door. Glasser teals Schwartzbaum that Hoff seys okay. Schwartzbaum then takes threexhundred three threexhundred three from his pocket and gives it to Glasser. He tolla Glasser that he will pay \$900 x for the year prexible to be read in three payments of \$300. Glasser then leaves. Shertly thereafter he meets Hoff and gives him \$150; he tells Hoff that the money is from Schwartzbaum.

The second payment from Schwartzbaum was probably made in July 1968. Again Schwartzbaum telephoned Glasser; Schwartzbaum gave Glasser \$300 in his private office; and Glasser gave Hoff \$150 telling Hoff that the money was from Schwartzbaum. The third payments of \$300 occurred in December 1968 and the same pattern was followed as therefor the second payment. In addition Schwartzbaum gave Glasser two bottles of whishey as a Christmas present.

In 1969, probably in July, Schwartzbaum telephoned Glasser and asked him to come to his shop.

Schwartzbaum told Glasser that he wanted to continue the payments as in 1968. He then gave Glasser

\$300 on three separate occasions: the first probably in July; the second probably in September or October; and the third in December. Glasser gave Hoff half of each payments in the same manner as in 1968.

Also during 1969 Glasser visited the Schwartzbaum shop with Harry Jaffee, the union business agent, on a routine labor matter. While there Jaffee asked a number of questions about several coats paragraph. Panalugamentaria in the shop? which had been manufactured elsewhere. After Glasser and Jaffee left the chop and went to the

lobby of the building where Glasser asked Jaffee to wait for him. Glasser then returned to the Schwartzbaum shop. He told Schwartzbaum that he thought & that they should take care of Jaffee. Schwartzbaum then gave Glasser \$100 and told him to give it to Jaffee. Glasser ** met Jaffee in the lobby, and to him the \$100 telling him that the money was from Schwartzbaum.

JCS:41s

UNITED STATES DISTRICT COURT NOW YOUR TO TOTALD

UNITED STATES OF AMERICA

: AFFIDAVIT

:

KARL "JACK" SCHWARTZBAUM.

-v-

COUNTY OF NEW YORK)

73 Cr. 616 (LWP)

Defeadont.

STATE OF NEW YORK) SS.:

JOHN C. SAEKTIA, being duly sworm, deponce and adya:

- 1. I on an Assistant United States Atternay in the office of Faul J. Curren, United States Atternay for the Scathern District of New York, and no such I served as assistant trial cosmes for the government at the trial of the inscent case. I make this efficient in opposition to defendent Schwartzham's motion for a new trial.
- 2. I have read and reviewed the affidevit of Assistant United States Attorney V. Thomas Fryson, Jr., sworn to on May 2, 1974 and submitted in opposition to defendant's new trial motion. The statements contained therein are in second with my reachierties of the events and subjects in issue.
- 3. Specifically, on March 26, 1974, Mr. Fryman, Mr. and Mrs. Jack Chasser and I mat in Mr. Fryman's office at the United States Courthouse, Foley Savare, New York, New York. On that date, in my presence, Mr. Chasser said, examp other things, that the desendant Schuprerham and people, through Chasser, to obtain permission to give out

A

"contracting" and to import gardents in violation of the collective labor agreement. Mr. Clauser also eaid that at some point in time thereafter he told defendent Schwartzleum that Mr. Charles Hoff had agreed to the arrangement.

4. On March 27, 1974, Mr. Fryssa forestried for my review a typewritten deaft of a memorandom of the preceding day's conference. I reviewed the same, found it substantially accurate and returned it to him.

JOHN C. SARETTA
Assistant United States Actorney

Seem to before me this

day of May, 1974.

1 32

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

-against-

KARL "JACK" SCHWARTZBAUM,

73 CR 616

Defendant.

STATE OF NEW YORK) : 85.: COUNTY OF NEW YORK) 1 1. 1.1

WILLIAM ESBITT, being duly sworn, deposes and says:

- Was your first 1. I am the attorney for the defendant and I am submitting this affidavit in reply to the affidavits of Mr. Fryman and Mr. Sabetta.
 - Mr. Fryman's affidavit not only fails to deny the statements contained in my affidavit, but supports the position of the defendant in his motion for a new trial.
 - There is no challenge by Mr. Fryman, nor could there be, to the proposition that without the credible testimony of Jack Glasser there could be no indictment and no conviction.
 - 4. There is no denying, nor could there be, that Glasser testified on cross-examination that he never told Mr. Sabetta or Mr. Fryman that he had told Schwartzbaum the name of the union official. (See Esbitt affidavit, p.6).

- 5. There is no denial, nor could there be, of Mr. Fryman's futile efforts to get Glassor to recall this (See Esbitt affidavit p.7).
- 6. And there is no denial that Glasser never saw GX3511 and that without the use of the last paragraph of the first page, Glasser would not have "remembered" as a fact something which he had just deni under oath during cross-examination (R.192-193)
- 7. On the affirmative side, Mr. Pryman admits in his affidavit that when Glasser said he told Schwartzbaum that Hoff said okay, Mr. Fryman was aware that this had not been brought out in Glasser's prior testimony and so Mr. Fryman had him mention it again and a third time to Mr. Sabetta.
- 8. However, no mention is made in Mr. Fryman's affidavit as to the circumstances under which this crucial fact came to be elicited from the government's key witness. These are circumstances which are important and the defense should have been afforded an opportunity to examine Mr. Fryman on how this hitherto unknown fact came into existence.
- 9. In addition, with respect to the creation for the first time in this case of a "file" memorandum of an interview with a witness, the Court's attention is again invited to the facts set forth in paragraph 20 of the Esbitt affidavit. Not one of these facts is denied or challenged by the government and all support the importance of defendant's request to examine Mr. Fryman as a witness for the defense.

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- that Glasser, not once, not twice but three times told him and Mr. Sabetta that he (Glasser) told Schwartzbaum the name of the union official, had no excuse, nor did Mr. Sabetta, for failing to inform the Court and the jury that Glasser lied when he testified under oath as follows: (R.195 -Esbitt affidavit p.6);
 - "Q. ***Did you tell Mr. Sabetta or Mr. Fryman that you told him [Schwartzbaum] the name of the official?
 - A. No, I did not.
 - Q. You never told Mr. Sabetta or Mr. Fryman that you had told him the name of the official?

. 12

- A. No, I did not.
- O. You say that under oath?
- A. Yes." (R.195)
- 11. With respect to government's Memorandum of Law, the government fails to submit any authority to support its opposition to defendant's motion.
 - defendant's POINT II, while we agree to the general proposition that the use of a memorandum to refresh a witness' recollection is usually discretionary with the trial judge, Corpus Juris Secumdum and McCormick make it quite clear where the line is drawn and the facts of our case establish an abuse of this discretion.
 - (b) With respect to the refusal to permit the defense the right to call Mr. Fryman as a witness, the cases cited in government's POINT II are distinguishable on their facts.

(1) In the Murphy case, the prosecutor was called as a witness without prior notice and without explanation.

The Court found his testimony merely cumulative. (2) In .

Newman, the prosecutor denied to the Court on the record, both as an officer of the Court and member of the Bar, making any bargain with the witness. Strong dissent relying on the Giglio case. (3) In Maloney, motion to strike appearance of United States Attorney held premature and in Gajewski, the Appellate Court, said:

"To be sure, an accused's right to call relevant witnesses and to present a complete defense may not be abrogated for the sake of trial convenience or for the purpose of protecting a United States Attorney from possible embarrassment while testifying, if he possesses information to the defense."

- 12. And with respect to the failure of the government attorneys to admit that Glasser lied on the witness stand, unfortunately Mr. Fryman misses the point. It is not a question of whether Glasser made the statements referred to at the bottom of page 4 of the government's brief. Of course, Glasser so testified. The false testimony relates to whether Glasser told it to Mr. Fryman and Mr. Sabetta. He denied under cath that he did. Mr. Fryman and Mr. Sabetta swore in their affidavits that he did. This was the lie that government's counsel avoided admitting to the Court and jury.
- 13. Despite the substantial authority cited in POINT IV of defendant's brief, not a single authority is mentioned in government's brief to support its position. The interest of the

. : '4'

United States Attorney, "in a criminal prosecution is not that it shall win a case, but that justice shall be don" (Berger v. U.S., 295 U.S. 88).

14. For the foregoing reasons as well as those in the motion papers, it is respectfully requested that defendant's motion for a new trial be granted.

WILLIAM ESBITT

Sworn to before me this

day of May, 1974.

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UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

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S. D. OF N.

UNITED STATES OF AMERICA

73 Cr. 616

KARL "JACK" SCHWARTZBAUM,

Defendant. :

WINDOFILM BALLANA

APPEARANCES:

WILLIAM ESBITT, ESQ. 122 East 42nd Street New York, New York 10017

Attorney for the Defendant

PAUL J. CURRAN
United States Attorney
By: V. THOMAS FRYMAN, JR., ESQ.
Assistant United States Attorney
United States Courthouse
Foley Square
New York, New York 10007

Attorney for United States of America

LAWRENCE W. PIERCE, D.J.

MEMORANDUM AND ORDER

Having been found guilty by a jury verdict of violations of section 186(a) of Title 29 of the United States Code, the defendant now moves pursuant to Rule 33

of the Fed.R.Civ.P. for a new trial on three separate but related grounds.

The first ground for the motion is the allegation that the Court improperly permitted the government to refresh the recollection of its principal witness, Mr. Jack Glasser, by the use of a memorandum prepared by the Assistant United States Attorney prosecuting the case. It is claimed that the preparation of the memorandum may well have been a subterfuge to enable the government to refresh the recollection of the witness to testify to facts which did not exist. In the Court's judgment this argument overlooks the fact that on his direct examination and without the aid of the memorandum the witness had given affirmative testimony concerning the disputed issue. Moreover, the affidavits submitted by the government in opposition to this motion amply describe the circumstances surrounding the preparation of the document. The Court has no evidence before it which could possibly justify rejection of the assertions therein. In view of this the Court finds these serious charges of subterfuge or fabrication against the government totally without foundation.

The defendant also contends that the use of the memorandum was unduly suggestive. There is no question,

Indeed this is the very purpose of the procedure. Whether it was unduly suggestive or unfairly prejudicial under the circumstances is a decision which rests in the sound discretion of the Court. After a review of the record and reconsideration of the issue, the Court has failed to find any possible abuse of its discretion in this regard which would warrant a new trial.

The second ground asserted for the motion for a new trial is the Court's refusal to permit the defense counsel to call as a witness the government's trial counsel. Apparently defense counsel wished to explore the contradictions between Glasser's testimony and what was contained in the memorandum prepared by the prosecutor. He also wanted to inquire as to the reasons underlying the preparat n of the document; further, he wished to elicit the circumstances surrounding particular questions and answers included in the memorandum.

The Court may properly refused to permit defense counsel to call the prosecutor as a witness if "it does not believe that 'he possesses information vital to the defense."

United States v. Newman, 476 F.2d 733, 738

(3rd Cir. 1973) (citation omitted). A showing should also be made that the information is not otherwise obtainable. United States v. Fiorillo, 376 F.2d 180, 185 (2d Cir. 1967).

Here defense counsel had means at his disposal—either by cross-examination or by simple use of the memorandum itself—to seek to establish the contradiction between Glasser's testimony and the terms of the memorandum. In this fashion, Glasser's credibility with respect to these matters would clearly be in issue. It follows, therefore, that there was no need to put the prosecutor on the stand in order to establish this.

The issues raised pertaining to the preparation of the document and the circumstances surrounding the questions and enswers included therein were, in this Court's opinion, collateral to the central issue of credibility and far from vital to the defense.

Why the Assistant United States Attorney chose to embody in memorandum form substantially what transpired during his interview with Mr. Glasser or what specific questions or answers were given during that interview or how these subjects of inquiry arose during the interview—all these matters were, in this Court's view, simply not

relevant or were at the most collateral to the issue at hard, that is, whether Mr. Glasser was telling the truth.

In light of all this, the Court believes that defense counsel's request to put the prosecutor on the stand was properly denied.

The last ground asserted is the government's alleged failure to inform the Court and the jury that Glasser's sworn testimony with respect to two particular points was false since it was specifically contradicted by the memorandum prepared by the prosecution. This alleged failure is said to constitute suppression of material evidence justifying a new trial.

given a copy of the memorandum prior to the trial and he was, of course, perfectly aware of Glasser's testimony with respect to the matters contained therein. The Court was also privy to the same information. Secondly, the government's offer to stipulate as to what the memorandum represented was rejected. (Transcript 381). The government also reised the possibility of putting the document in evidence. (Transcript 383-84). Either of these two courses would have necessarily brought out the fact that, contrary to what Glasser had stated during his cross-examination, he had

- 5 -

given information to the prosecution relating to the two points in question.

Under these circumstances, the Court fails to

ee any suppression of evidence favorable to the defendant.

Pefense counsel's suggestion that it was the government's

responsibility to inform the jury that Glasser had testified

falsely is not well taken. He was completely apprised of

the facts and it was up to him to test the witness' credi
ility by whatever means were at his disposal.

The Court concludes that it would not serve the interest of justice to grant a new trial and accordingly the motion is denied.

SO ORDERED.

Dated: New York, New York May 13, 1974

> LAWRENCE W. PIERCE U. S. D. J.

NOTICE OF MOTION FOR NEW TRIAL

UNITED :	STATE	ES DI	STRI	CT	COL	JRT
SOUTHER	N DIS	STRIC	T OF	NE	W:	YORK

UNITED STATES OF AMERICA,

Plaintiff,

NOTICE OF MOTION

-against-

73 CR 616

KARL "JACK" SCHWARTZBAUM,

Defendant.

SIRS:

PLEASE TAKE NOTICE that upon all the proceedings heretofore had herein and upon the annexed affidavit of William Esbitt, sworn to the 20th day of May, 1974, a motion will be made before the Honorable Lawrence W. Pierce, United States District Judge for the Southern District of New York, in Room 2804 of the United States Courthouse, Foley Square, New York, New York at 4:45 P.M. on the 29th day of May, 1974 for an order pursuant to Rule 33 of the Federal Rules of Criminal Procedure setting aside the verdict against the defendant and granting a new trial on the ground of newly discovered evidence and for such other and further relief as to the Court may seem just and proper.

DATED: New York, New York May 20, 1974

Yours, etc.

WILLIAM ESBITT

Attorney for Defendant 122 East 42nd Street New York, New York 10017

(212) Oxford 7-0133

TO:

AFFIDAVIT IN SUPPORT OF MOTION

[Same Caption]

STATE OF NEW YORK)

: SS.:
COUNTY OF NEW YORK)

WILLIAM ESBITT, being duly sworn, deposes and says:

- 1. I am the attorney for the defendant herein and submit this affidavit in support of the defendant's motion herein for a new trial on the ground of newly discovered evidence.
- 2. According to the testimony of Jack Glasser, Government's key witness in its trial against defendant, Karl "Jack" Schwartzbaum, Glasser, during the years 1967, 1968 and 1969 received from manufacturers a total of \$14,000 of which he retained \$5,043. A table of these receipts by manufacturers is set forth in Exhibit A, which is annexed hereto and made a part hereof. A table of the same receipts by years is marked Exhibit B, annexed hereto and made a part hereof.
- 3. Your deponent has just received from the attorneys for the union officials, who were also convicted on the testimony of

Jack Glasser, documentary evidence indicating that during the years 1967 through 1970, Glasser made <u>cash</u> deposits in his savings accounts of \$56,701.05 despite the fact that during these years his maximum earnings were \$225. per week.

- 4. Annexed hereto and marked Exhibit C are deposit slips showing cash deposits in the East New York Savings Bank. Annexed hereto and marked Exhibit D are cash deposit slips for the Greenwich Savings Bank and annexed hereto and marked Exhibit E are cash deposit slips for the Emigrant Savings Bank.
- 5. As you can see by an examination of Exhibits "C", "D" and "E", there were considerable cash deposits made in these three banks during the years 1967 through 1970 Exhibit F, annexed hereto, presents in summary form both Glasser's testimony as to receipts and the information discovered in the savings banks' documents. As is shown therein, Glasser deposited, in cash, during 1967-1970, a total of \$56,701.05 almost half of his life's savings, and, significantly, far more than the total amount of money he said he received from manufacturers and retained for himself.

- 6. Glasser testified that, as of the time of his discharge by the Associated Fur Manufacturers, Inc., his gross salary was \$225 per week, or \$11,700 per year. We submit that the source of these cash deposits can be explained only by concluding that Glasser perjured himself when he testified that he gave any of the monies to one or more of the union officials. Rather, there were much larger payments and/or payments from many additional sources and no portion of any payments went to anyone other than Glasser himself. There is no other way to explain these huge cash deposits, especially because the bank records reveal no cash deposits after August 1970 the month in which the Association uncovered the fact that manufacturers were paying Glasser- and the month when he was "retired" from the
- 7. Neither defendant Schwartzbaum nor his attorney had any way of knowing nor could we anticipate that Glasser had deposited over \$56,000.00 in cash in his savings accounts during the years 1967, 1968, 1969 and until August 1970.

- 8. Since the Government had the burden of proving not only that Schwartzbaum gave cash to Glasser, but also that Glasser gave cash to Hoff as he so testified, the disclosure of this newly discovered evidence could very well have led the jury to believe that Glasser retained all the money he received from Schwartzbaum and other fur manufacturers and deposited these receipts in his savings accounts.
- 9. On this additional proof, it is not unlikely that the jury could have found the defendant Schwartzbaum not guilty.

WHEREFORE, it is respectfully submitted that defendant's motion for a new trial be granted.

Sworn to before me this

20th day of May, 1974.

ROSE ROSATI
NOT/RY PURUS, State of New York
No. 31-8626030
Qualified in New York County
Commission Capital March 30, 19

Exhibit "A", Annexed to Foregoing Affidavit TABLE OF GLASSER RECEIPTS, BY MANUFACTURER

			Receipts from	Glasser Retained Portion of Receipts from Manufacturers	
Manufacturer	Year	Quarter	Manufacturers per Glasser Testimony	per Glasser Testimony	Transcript Reference
	1967	3rd	\$ 500	\$ 167	86
SHERMAN BROS.	130.	4th	500	167	86
(Sam Sherman)	1968	3rd	500	167	86
		4th	500	167	86
	1969	3rd	500	125	86
		4th	500	125	: 36
CHATEAU CREATIONS	1967	3rd	- 500	125	. 37
(Harry Hessel)		4th	1,000	250	87
(Harry Messel)	1968	2nd	500	125	87
		3rd	500	125	88
		4th	1,000	250	88
	1969	2nd	500	125	88
		3rd	500	125	88
		4th	1,000	250	88
BRESLIN BAKER	1968	3rd	500	250	89
(Sam Baker)		4th	500	250	89
(Sam Baker)	1969	3rd	500	250	89
		4th	500	250	89
K. J. SCHWARTZBAUM	1968	3rd	600	300	68-69
(Karl "Jack"		4th	300	150	70
Schwartzbaum)	1969	3rd	600	300	71-72
Schwartzbaumy		4th	300	150	73
CORINNA FURS	. 1968	3rd	250	125	91
	1000	4th	150	75	92
(Sol Cohen)	1969	3rd	150	75	92
		4th	150	75	92
DANIEL FURS (Daniel Ginsberg)	1969	2nd	1,000	500	93

Exhibit "B", Annexed to Foregoing Affidavit

TABLE OF GLASSER RECEIPTS, BY DATE

Glasser

Year	Quarter	Manufacturer	, Manufe	is from acturers lasser mony	Retained Portion of Receipts from Manufacturers per Glasser Testimony			
		SHERMAN	\$ 500		\$ 167			
1967	3rd	CHATEAU	500	\$ 1,000	125	\$ 292		
	4th	SHERMAN CHATEAU	500 1,000	1,500	167 250	417		
1968	2nd	CHATEAU	500	500	125	125		
1000	3rd	SHERMAN CHATEAU BAKER SCHWARTZBAUM	500 500 500 600		167 125 250 300			
	4th	CORINNA SHERMAN CHATEAU BAKER	500 1,000 500 300	2,350	125 167 250 250 150	967		
		SCHWARTZBAUM CORINNA	150	2,450	75	892		
1969	2nd	DANIEL	500 1,000	1,500	125 500	625		
	3rd	SHERMAN CHATEAU BAKEE SCHWARTZBAUM CORINNA	500 500 500 600 150	2,250	125 125 250 300 75	875		
	4th	SHERMAN CHATEAU BAKEE SCHWARTZBAUM	500 1,000 500 300		125 250 250 150			
		CORINNA	150	2,450 \$14,000	75	\$5,043		

EXHIBIT "C" ANNEXED TO FOREGOING AFFIDAVIT Cash Deposit Slips - East New York Savings Bank

Betty Glasson on Jaco Glasson													
C	Date Withdrawals						posit	•	Inte	rest	Bolonce		
			9	fan	4.	100	7	1-	144	68-	7]	
9	7	68			,	10	205	47			10	302	4
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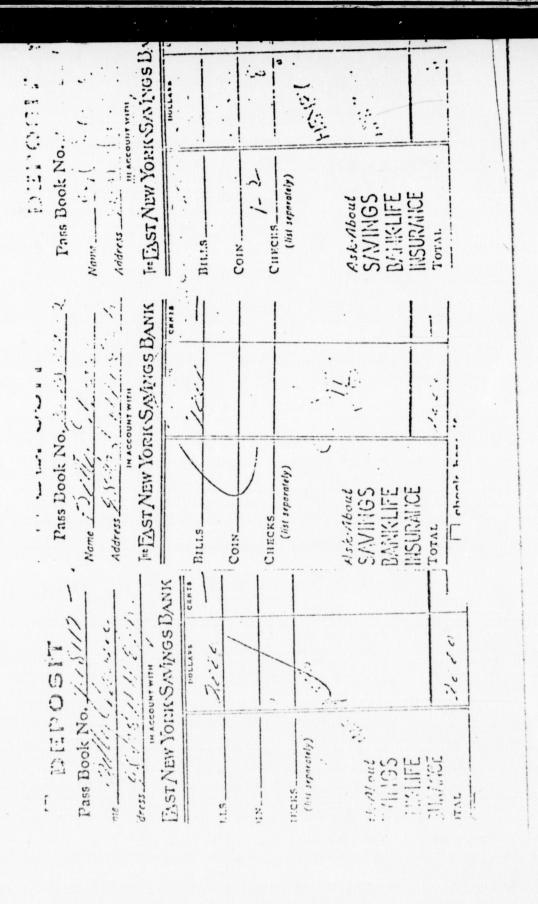
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EXHIBIT "D" ANNEXED TO FOREGOING AFFIDAVIT

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EXHIBIT "E" ANNEXED TO FOREGOING AFFIDAVIT Cash Deposit Slips - Emigrant Savings Bank

EMIGRANT SAVINGS BANK

TRANSCRIPT OF ACCOUNT

To:	Wein	Rosenthal	We Clar
	110	1	c. ft

att : Mr. Mucha C. R. Textury.

DATE PREPARED

4/15/74

The following is a transcript from the records of the Emigrant Savings Bank for:

ACCOUNT NO. 68 971 OFFICE 03

TITLE OF ACCOUNT Jack Alassin in Belly:

LATEST TRANSACTION APPEARS FIRST

MACHINE NO.	DATE	DRAFTS	DEPOSITS	DIVIDEND	BALANCE
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53.4	10/04/69		9335		43 256 79
570B	10/12/60		5257		43/63 44
526	10/11/19		3 113.06		43 050 57
523	10/11/19			980 75	39 967 51
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The undersigned hereby certifies that the foregoing information is a true and com

The undersigned hereby certifies that the foregoing information is a true and correct transcript of the activity of the stated account as taken from the machine records maintained in the regular course of business of Emigrant Savings Bank.

AUTHORIZED SIGNATURE

Medicas Por

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Exhibit "F" Annexed to Foregoing Affidavit

TABLE OF GLASSER RECEIPTS AND DEPOSITS

Year	Quarter	Reccipts • from Manufacturers per Glasser Testimony	Cash Deposits Made in Glasser Savings Accounts	Glasser Retained Portion of Receipts from Manufacturers per Glasser Testimony
1967	1st		\$ 1,000.00	
150.	2nd		6,550.00	
	3rd	\$ 1,000.00		\$ 292.00
	4th	1,500.00	3,601.05	417.00
1968	1st		1,800.00	
1300	2nd	500.00	4,250.00	125.00
	3rd	2,350.00	4,900.00	967.00
	4th	2,450.00	3,000.00	892.00
1969	1st		3,000.00	
1300	2nd	1,500.00		625.00
	3rd	2,250.00	5,300.00	875.00
	4th	2,450.00	14,200.00	850.00
1970	1st		350.00	
1310	2nd		3,100.00	
	3rd		5,650.00	
	3.4	\$14,000.00	\$56,701.05	\$5,043.00

^{*} Record cites contained in Exhibit A.

VTF:1q d-647

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v - : AFFIDAVIT

KARL "JACK" SCHWARTZBAUM, : 73 Cr. 616 (LWP)

Defendant.

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

V. THOMAS FRYMAN, JR., being duly sworn, deposes and says:

- 1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York. I served as the government's trial counsel herein, and I make this Affidavit in opposition to defendant's motion for a new trial.
- 2. This motion by defendant is based on records from The East New York Savings Bank, The Greenwich Savings Bank and the Emigrant Savings Bank for savings accounts for Jack Glasser. Mr. Glasser was a government witness at the trial herein and at a related trial of four union officials, United States v. George Stofsky, et al., 73 Cr. 614, held on February 11 through February 28, 1974. The exhibits to the affidavit in support of defendant's motions are taken from

an affidavit previously submitted by the defendants in the Stofsky proceeding in support of a motion for a new trial therein on the ground of newly discovered evidence. Copies of affidavits submitted by the government in opposition to the new trial motion in the Stofsky proceeding are attached hereto as follows:

Exhibit 1

Affidavit of Fred H. Hinck, Assistant Vice President of The East New York Savings Bank

Exhibit 2

Affidavit of Peter Russack, Assistant Vice President of The East New York Savings Bank.

Exhibit 3

Affidavit of Bruce C. Saxton, Assistant Vice President of the Greenwich Savings Bank

Exhibit 4

Affidavit of George F. Rickey, Vice President of the Emigrant Savings Bank

3. The existence of Mr. Glasser's accounts at The East New York Savings Bank was shown by Mr. Glasser's income tax return for 1972 which was introduced into evidence at the Stofsky trial on February 14, 1974. The existence of Mr. Glasser's accounts at The Greenwich Savings Bank and the Emigrant Savings Bank was shown by Mr. Glasser's income tax returns for 1967 and 1970 which were introduced into evidence at the Stofsky trial on February 20, 1974.

4. While defendant's counsel herein was aware of the testimony and exhibits at the <u>Stofsky</u> trial, he never sought to serve trial subpoenas returnable for April 1, 1974,

d-647

the day the trial herein began, for the records on which this motion is based. As shown by the Hinck and Russack affidavits, Exhibits 1 and 2, part of the records of The East New York Savings Bank on which this motion is based were available on February 14, 1974, and the remainder prior to March 7, 1974. As shown by the Saxton and Rickey affidavits, Exhibits 3 and 4, the records of The Greenwich Savings Bank and the Emigrant Savings Bank on which this motion is based were available to defendant's counsel on two to four days notice — had he served a subpoena for them.

5. On May 3, 6, 13 and 14, 1974, John C. Sabetta, an Assistant United States Attorney in the office of Paul J. Curran, and I interviewed Mr. Glasser and his wife, Betty Glasser, with regard to charges contained in the similar new trial motion made by the defendants in the Stofsky proceeding, i.e., that Mr. Glasser committed perjury when he testified that he paid portions of moneys which he had

VTF: 19 d-647

received from various union fur manufacturers including defendant herein, Karl "Jack" Schwartzbaum, to officials of the Furriers Joint Council. Mr. Glasser affirmed that his prior testimony about such payments to union officials was entirely truthful.

- 6. At these meetings, Mr. Sabetta and I also discussed with Mr. and Mrs. Glasser the source of the deposits in their bank accounts during the years 1967-70, and their prior testimony at the trial herein and at the <u>Stofsky</u> trial. Mr. and Mrs. Glasser informed representatives of the government for the first time during these meetings that they received funds from the following sources during those years:
- Mr. Glasser told us that, in addition to the union fur manufacturers which he identified at the trial herein, numerous other union fur manufacturers paid him moneys and that in each such instance he passed a substantial portion of the same to one or more union officials—almost invariably one

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or more of the defendants in the <u>Stofsky</u> proceeding--for the purpose of obtaining the union's acquiescence to violations of the contracting and overtime provisions of the collective labor agreement.

- (b) Sale of Jewelry. Mr. and Mrs. Glasser sold several pieces of jewelry, which she had inherited from her parents, in 1968 and 1970. The proceeds were approximately \$10,500.
- (c) Christmas Gifts. Mr. Glasser received \$2,000 to \$3,500 a year in cash as Christmas gifts from fur manufacturers during the years 1967-69. Most of the gifts were \$50 or \$100.
- (d) Wholesale Commissions. Mr. Glasser would take retail customers to fur manufacturers and receive a ten percent commission from the manufacturer on any subsequent sales. These commissions averaged \$3,000 to \$5,000 a year.
- (e) <u>Vacation Gifts</u>. Mr. Glasser received \$600 to \$700 a year from fur manufacturers as vacation presents.
- approximately \$500 a year in expense money from the Associated Fur Manufacturers, Inc., for serving on overtime committees. He received \$7.50 for expenses each time he served on a committee.
- also received commissions for the sale of lofts and for .
 introducing to one another persons who became partners in
 fur manufacturing companies. He estimated that he received
 a total of approximately \$2,000 in such commissions during
 the years 1967-70.

d-647

Court setting forth further details of these interviews with Mr. and Mrs. Glasser. The government requests that this Additional Affidavit, which has not been served on counsel for defendant, be sealed and made a part of the record in this proceeding. Publication of the information contained in the Additional Affidavit might compromise further federal investigations of the fur manufacturing industry and prematurely identify numerous other individuals who have allegedly violated federal criminal laws.

8. Attached hereto as Exhibit 5 is a table showing for the years 1967-69 the amount of funds from the various sources for Mr. and Mrs. Glasser as shown in their income tax returns, their testimony at the trial herein and at the Stofsky trial and the information provided during the interviews described above; the known expenses for Mr. and Mrs. Glasser indicated on their income tax returns; and a summary of the transactions in their savings accounts.

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- 9. Set forth below are specific portions of Mr. Glasser's testimony at the trial herein and Mr. and Mrs. Glasser's comments:
 - (a) "Q Mr. Glasser, you mentioned that in addition to the payments from Mr. Schwartzbaum which you passed on to Mr. Hoff you had also transmitted payments to Mr. Hoff from I believe two other firms, Sherman Brothers and Chateau.

Have you ever accepted payments from any other fur manufacturer which you transmitted to any official of the Furriers Union?

A Yes, I did.

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- Q What firms were those?
- There was a firm called Corrina Furs, there was Breslin, Baker, there is one other one now and I just can't remember his name. I just can't recall. There was another one. There were five firms all together."

LIE

Comment: Mr. Glasser meant that there were five firms which he had testified about.

- (b) "Q Wasn't it the practice of your fur manufacturers to give you a Christmas gift each year?
 - A A bottle of liquor, yes.
 - Q That's all?
 - A Never anything else.
 - Q Did they ever give you cash?
 - A No, sir." (Tr. 151)

Comment: The answer is incorrect. He received cash Christmas gifts from certain manufacturers. He never received a cash Christmas present from Karl "Jack" Schwartzbaum or his firm.

- (c) "Q This money that you claim you got from manufacturers and kept, did you need that for gambling purposes?
 - A Did I need it for gambling?
 - Q Yes.
 - A I never gambled in my life.
 - Q You never gambled in your life?
 - A That's what I said. I never gambled in my life.
 - Q Did you go to the racetrack?
 - A Never went to the racetrack in my life.
 - Q Never bet on the horses?
 - A Never bet on a horse.
 - Q In your life?
 - A In my life.
 - Q And that's the truth?
 - A And that's the truth." (Tr. 153)

Comment: The answers are not precisely correction one occasion he gambled at the casino in Puerto Rico and lost about \$400. He has also been to the racetrack on a very few occasions, possibly five or six times in his life.

LIE

TIE

VTF:1q d-647

Li=

10. Defendant's counsel during his cross-examination of Mr. Glasser herein made no reference to the following testimony given by Mrs. Glasser on February 15, 1974, at the Stofsky trial:

"Q Does your husband gamble at all?

- A No, sir.
- Q Does he ever go to the racetrack?
- A With me every once in a while we went to the track.
- Q How often is every once in a while?
- A Well, first of all, it would be on a Saturday night or Friday night.
- Q Only then?
- A Once probably on a Saturday afternoon. At night it would be trotters; afternoon would be track. That is it, sir.
- Q How often did you go to the track with him, let's say, from '67 to 1970?
- A Truthfully, I couldn't give you the correct figure.
- Q And where would he get the money to gamble at the track?
- A He had a certain amount he took from his pay for himself for the week. That is it. From that he would do it.

VTF:1q d-647

- Q Do you know what your husband was earning in '67 from the Association?
- A Yes, sir.
- Q How much?
- A I think it was about 200 or 225 dollars a week.
 - Q How much of that did he bank?
 - A Did he bank?
 - Q Yes.
 - A Well, at that time he was giving me \$60 a week for the table. He took care of all the bills. He took, I think, it was, \$25 a week for himself, and the rest went into the bank, sir.
 - Q \$25 a week?
 - A That is right.
 - Q Is that the \$25 that he went to the track with with you on Friday nights, Saturdays and Sundays?
 - A Not Sundays.

- Q Forget Sundays. I am sorry.
- A Not every Friday night or Saturday. This was an occasion for us to go. We are not gamblers.
- Q Do you know whether he ever went to the track during the week?
- A When he went to work I cannot say. I know he went to work. That is all.
- Q Do you know if he was betting during the week?
- A He never bets with a bookie.
- Q You know that?
- A I truthfully can swear to that, yes, sir.
- Q Were you with your husband all during the day when he was working with the Association?
- A Working?
- Q Yes.
- A I was never with him during the day when he was working.
- Q How can you truthfully say you don't know he was betting with a bookie?

- 7 -

GPO: 1972 O - 474-479

- A Because my husband always said that he wants to see his money ride. He never would go to a bookie.
- Q He wants to see his money ride?
- A You were at the track watching it.
 - Q He has to be at the track?
 - A Yes.
 - Q Do you know whether he ever went to the track during the week?
 - A I did not have him followed. I know he went to work.
 - Q And you say that \$25 is all that he bet?
 - A Bet? I didn't say bet, sir.
 - Q That was all the money he had to spend?
 - A Allowance.
 - Q Allowance from you?
 - A He took that off his paycheck, gave me an allowance. We banked the others, and part went into the checking account for our bills." (Tr. 475-78)

V. THOMAS FRYMAN, JR.
Assistant United States Attorney

Sworn to before me this 2945 day of May, 1974.

John The Che-

Notary Public, State of New York
No. 52-4131670
Qualified in Selfolk County
Certificate filed in New York County
Term Expires March 30, 19-7-6-

Exhibit 1, Annexed to Foregoing Affidavit

JACK AND BETTY GLASSER FUNDS FROM VARIOUS SOURCES

r	DIVIDS THOM	1 -11111000	200		
Item	1967	1968	1969		
Wages	10,374.00	10, 50.00	13,934.00		
Dividends	766.40	970.38	1,187.34		
	3,503.16	3,828.59	4,367.28		
Interest Amount Retaine of Illegal Pay ments Previous ly Disclosed Amount Retaine of Illegal Pay ments from	d 7- 5- 709.00	1,984.00	2,350.00		
Other Union Fu	ır	- OFF 00	6,825.00		
Manufacturers	7,025.00	7,275.00		of wift	could
Sale of Jewelr	y 1	5,000.00	Profit sale		could
Christmas			be incom		
Gifts 2	2,500.00	2,500.00	2,500.00	if	
Wholesale					
Commissions 3	3,500.00	3,500.00	3,500.00	income	
Vacation	200.00	600.00	600.00		
Gifts *	600.00	600.00	000.00		
Overtime		500.00	500.00	income	
Expenses	500.00	500.00	500.00	meome	
Miscellaneous Commissions b	500.00	500.00	500.00	income	Total
Total	\$29,977.56	\$37,317.97	\$36,263.62	\$103,	559.15

1. Amount is approximate. Mr. Glasser stated the proceeds of sales of jewelry in 1968 and 1970 were approximately \$10,500.

2. Amounts are approximate. Mr. Glasser stated that he received \$2,000 to \$3,500 a year in cash as Christmas gifts from fur manufacturers.

3. Amounts are approximate. Mr. Glasser stated that such commissions averaged \$3,000 to \$5,000 a year.

4. Amounts are approximate. Mr. Glasser stated that he received \$600 to \$700 a year from fur manufacturers as vacation presents.

5. Amounts are approximate. Mr. Glasser estimated that he received a total of approximately \$2,000 in such commissions during the years 1967-70.

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Exhibit 1, Annexed to Foregoing Affidavit EXPENSES SHOWN ON TAX RETURNS

Item	1967	1968	1969	
Federal				
Income Tax	2,168.92	2,040.01	2,808.95	
Other Taxes	1,085.65	915.23	990.54	
Interest		174.00		
Drugs	350.00	500.00	495.00	
Other				
Medical	1,017.50	1,035.00	1,672.85	
Medical				
Insurance		230.00	300.00 6	
Cash Con-				
tributions	450.00	550.00	550.00	
Miscellaneous	20.00	677.00	787.42	
				Total
Total	\$5,092.07	\$6,121.24	\$7,604.76	\$18,818.07
Amount Funds				
Sources Excee	ds Expenses			
Shown on Tax	Returns			Total
	\$24,885.49	\$31,196.73	\$28,658.86	\$84,741.08
	SAVI	NGS ACCO	UNTS	
				Total
Cash				
Deposits	11,151.05	13,950.00	22,500.00	47,601.05
Deposits by				
Check	1,901.10	942.27	1,400.83	4,244.20
Interest 7	3,475.72	3,828.59	4,367.28	11,671.59
Total	\$16,527.87	\$18,720.86	\$28,268.11	\$63,516.84
Withdrawals	\$10,000.00		\$13,880.00	\$23,880.00

^{6.} Minimum amount indicated by return.7. Interest as shown by income tax returns for accounts in The East New York Savings Bank, The Greenwich Savings Bank and the Emigrant Savings Bank. Interest of \$27.44 from the Dollar Savings Bank for 1967 is omitted.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

FRED H. HINCK, being duly sworn, deposes and says:

- 1. I am an Assistant Vice President of The East New York Savings Bank, by whom I have been employed for approximately 41 years. I work and have my business office at a branch of the bank located at 58-14 99th Street, Corona, Queens, New York 11368.
- 2. At approximately 11:50 a.m. on February 13, 1974, The East New York Savings Bank, at the above mentioned branch, was served by the defendants in *United States* v. Stofsky, et al., 73 Cr. 614, with a trial subpoena duces tecum, dated February 13, 1974. That subpeona commanded that at 9:30 a.m. on February 14, 1974, The East New York Savings Bank appear in Room 618 of the United States Courthouse for the Southern District of New York and produce records pertaining to the accounts of Jack Glasser

and Betty Glasser for the period 1967 through 1972 including, but not limited to, copies of account cards, monthly statements, application forms, loan transactions, credit inquiries and safe deposit boxes.

- 3. On February 13, 1974, after the receipt of said subpoena, I telephoned defendants' attorneys, Weiss Rosenthal Heller & Schwartzman, 295 Madison Avenue, New York, New York. I identified myself and asked to speak to one of the attorneys participating in the trial of United States v. Stofsky, et al. None was available, and I was referred instead to a man I believe named Mr. Horowitz, to whom I spoke. I advised Mr. Horowitz that the bank would be unable, on one-half day's notice, to produce the next morning all the documents called for by defendants' subpoena duces tecum, since some of the documents for the years 1967 through 1970 were stored in an archive at a Brooklyn branch of the bank. I asked whether it would be possible to adjourn the return date of the subpoena. Mr. Horowitz advised me that the subpoena could not be adjourned and that the bank should appear as directed with whatever pertinent documents it was able to produce.
- 4. Following the completion of my conversation with Mr. Horowitz, I instructed bank employees to prepare transcripts of any Glasser accounts for the period 1967 through 1973 and cull from the branch's files pertaining to the Glasser accounts any checks issued to the Glassers, all large deposit and withdrawal tickets, signature cards and collection drafts. By early evening hours a transcript for the entire period had been prepared and pertinent documents for the years 1971, 1972, and 1973 accumulated for reproduction.
- 5. I worked at the bank that entire evening and the next morning until 2:00 a.m. repairing a reproduction ma-

chine and copying the Glasser documents earlier culled from our files. I remained at the bank overnight and the next morning, February 14th, when Mr. Peter Russack, Assistant Vice-President of the bank, arrived at work, I transferred to him in one envelope the transcripts of the Glasser accounts for the period 1967 through 1973 as well as the originals of the Glasser documents culled from our files, and in a second envelope the copies I had prepared of the documents taken from our files. I instructed Mr. Russack to produce both envelopes and their contents at the time and place commanded by the subpoena; and I further instructed Mr. Russack to surrender to the appropriate party the envelope containing copies of the documents and to turn over also the sole set of transcripts which had been placed in the envelope with the original bank documents. My purpose in forwarding the original documents, as well as copies thereof, was to provide defendants' counsel with an opportunity to view both and assure themselves of the authenticity and accuracy of the copies. Thereafter Mr. Russack departed.

- 6. About noon on February 14, 1974, Mr. Russack returned to the bank and advised me he had produced the envelope containing copies of the bank documents and that he had later been advised by one of defendants' attorneys that he was free to depart. He further advised me that no further requests had been made of him or the bank following production of the documents as aforesaid. At that time Mr. Russack returned to me the envelope containing the original documents he had carried to the United States Corrthouse earlier that day and that envelope and its contents were thereafter placed in the bank's vault.
- 7. The following day, February 15th, I withdrew from the vault the above-mentioned envelope containing the original documents and discovered therein the transcripts of

the Glasser accounts which inadvertently had not been surrendered pursuant to the subpoena duces tecum the preceding day. I telephoned the firm of Weiss Rosenthal Heller & Schwartzman that day and spoke to a Mrs. Clarkson. I believe I advised her that the Glasser transcripts had not been surrendered at the trial court the prior day because of inadvertence and that I would forward the same to the firm by mail. I further advised her that the Glasser deposit and withdrawal tickets for 1967 through 1970, which were maintained at the Brooklyn archive and whose production the subpoena did not specifically command, had not been produced the preceding day pursuant to the subpoena duces tecum. I asked whether it was necessary for the bank to produce the same at the trial in light of the fact that on the preceding day no request had been made of Mr. Russack to do so. Mrs. Clarkson requested only that we gather the remaining documents and send them along to the firm to complete their file.

8. On the next business day, Tuesday, February 19, 1974, I forwarded by mail to Weiss Rosenthal Heller & Schwartzman, to the attention of a Mr. Abramowitz, the transcripts of the Glasser accounts. That same day I made a request in writing of the banks Brooklyn archive to produce the deposit and withdrawal tickets for the period 1967 through 1970. I have been advised by Mr. Russack that our branch of the bank did thereafter receive copies of the requested documents, which Mr. Rusack forwarded to Mrs. Clarkson at Weiss Rosenthal Heller & Schwartzman under cover of a letter dated March 6, 1974.

Fred H. Hinck Assistant Vice President The East New York Savings Bank

Affidavit of Peter Russack

Sworn to before me this 23 day of May, 1974

James F. Talbot Notary Public, State of New York

Affidavit of Peter Russack

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

PETER RUSSACK, being duly sworn, deposes and says:

1. I am an Assistant Vice President of The East New York Savings Bank, by whom I have been employed for

Affidavit of Peter Russack

approximately 40 years. I work and have my business office at a branch of the bank located at 58-14 99th Street, Corona, Queens, New York 11368.

- 2. On the morning of February 14, 1974, Mr. Fred H. Hinck, an Assistant Vice President of The East New York Savings Bank, at the above-mentioned branch, handed to me two envelopes which he said contained certain bank records relating to accounts in the name of Jack Glasser and Betty Glasser, including transcripts of said accounts for the period 1967 through 1973, and requested that I produce them that morning in room 618 of the United States Courthouse for the Southern District of New York pursuant to a trial subpoena duces tecum served on the bank. Based on information I received that morning, I believed that one envelope contained the bank's original records and the other envelope copies of the same. I understood that the copies were to be surrendered pursuant to the subpoena and the originals were to be made available to counsel, if desired, to check the authenticity and accuracy of the copies.
 - 3. I did as requested and carried the two envelopes and their contents to the United States Courthouse where, upon request, I transferred custody of the envelope containing the copies to a court clerk in Room 618. He thereafter transferred custody of the envelope and its contents to an individual who earlier had identified himself to me as one of defendants' attorneys and whose name I have since come to believe is Mr. Sonberg. Mr. Sonberg advised me shortly thereafter that having produced the bank's records as aforesaid, I was under no requirement to remain. He made no request that the bank produce any other documents or that he be allowed to view the originals of the copies he received. I departed and returned to the bank where I reported the

Affidavit of Piter Russack

foregoing to Mr. Hinck and returned to him the envelope I understood contained the original bank documents in its unopened state.

4. Prior to March 6, 1974, the branch of the Bank where I work received from the bank's Brooklyn archive copies of various deposit and withdrawal tickets for the above mentioned Glasser accounts for the period 1967 through 1970. Under cover of letter dated March 6, 1974, I forwarded copies of the same to Weiss Rosenthal Heller & Schwartzman, to the attention of a Mrs. Clarkson—as previously instructed so to do by Mr. Hinck.

PETER RUSSACK Assistant Vice President The East New York Savings Bank

Sworn to before me this 23 day of May, 1974.

(Notary Stamp Illegible)

Affidavit of Bruce C. Saxton

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and CLIFFORD LAGEOLES,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

BRUCE C. SAXTON, being duly sworn, deposes and says:

- 1. I am an Assistant Vice President of The Greenwich Savings Bank, by whom I have been employed for approximately 25 years. My business office is at a branch of the bank located at Broadway and Sixth Avenue at 36th Street, New York, New York 10018.
- 2. On or about April 10 or 11, 1974, The Greenwich Savings Bank, at the above-mentioned branch, was served by the defendants in *United States* v. Stofsky, et al., 73 Cr. 614, with a subpoena duces tecum dated April 10, 1974. That subpoena called for the production of the records pertaining to the accounts of Jack and Betty Glasser for the period 1967 through 1972, including, but not limited to, account cards, transcripts of accounts, application cards, and deposit and withdrawal slips.

Affidavit of Bruce C. Saxton

- 3. The bank's records relating to the accounts of Jack and Betty Glasser—Regular Account #A 190176-7 and Time Deposit #A 190176-7—were maintained at the same branch upon which the subpoena duces tecum had been served.
- 4. On April 16, 1974, approximately three business days after service on the bank of the subpoena duces tecum, The Greenwich Savings Bank supplied to Weiss Rosenthal Heller & Schwartzman, counsel for the defendants named in the caption of this matter, a transcript of the above said accounts of Jack and Betty Glasser for the period 1967 through 1972, as well as copies of the deposit and withdrawal slips and teller's checks pertinent to said accounts for that period.
 - 5. Had The Greenwich Savings Bank been served with an appropriate trial subpoena duces tecum on any date in February, 1974, copies of the documents described in paragraph 4 herein could have been produced by the bank within no more than two business days and probably even less had the bank been advised of the existence of exigent circumstances.

Bruce C. Saxton Assistant Vice President The Greenwich Savings Bank

Sworn to before me this 23 day of May, 1974.

ANNE LYONS

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Affidavit of George F. Rickey

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK 73 Cr. 614 (LWP)

UNITED STATES OF AMERICA

-v.--

GEORGE STOFSKY, CHARLES HOFF, AL GOLD and Clafford Lageoles,

Defendants.

State of New York, County of New York, Southern District of New York, ss.:

GEORGE F. RICKEY, being duly sworn, deposes and says:

- 1. I am a Vice President of the Emigrant Savings Bank, by whom I have been employed for approximately 40 years. I have my business office and work at a branch of the bank located at 393 Seventh Avenue, New York, New York 10001.
- 2. On April 10, 1974, the Emigrant Savings Bank was served by the defendants in *United States* v. Stofsky, et al., 73 Cr. 614, with a subpoena duccs tecum, dated April 10, 1974. The following day that subpoena was received at the branch where I work. The subpoena called for the production of the records pertaining to the accounts of Jack and Betty Glasser for the period 1967 through 1972, including, but not limited to, account cards, transcripts of accounts, application cards and deposit and withdrawal slips.

Affidavit of George F. Rickey

- 3. The bank's record, relating to the account of Jack and Betty Glasser—Account No. 68971—were maintained at the branch at which I work.
- 4. On Friday, April 12, 1974, the Emigrant Savings Bank prepared a transcript of the account of Jack and Betty Glasser for the period of 1967 through 1972 and prepared from its files copies of the deposit and withdrawal slips and teller's checks pertinent to said accounts for that period. On the following Monday or Tuesday, April 15th or 16th, the foregoing documents were supplied to Weiss Rosenthal Heller and Schwartzman, counsel for the defendants named in the caption of this matter.
- 5. Had the Emigrant Savings Bank been served with an appropriate trial subpoena duces tecum on any date in February, 1974, copies of the documents described in paragraph 4 herein could have been produced by the bank within approximately three to four days.

GEORGE F. RICKEY Vice President Emigrant Savings Bank

Sworn to before me this 23rd day of May, 1974.

DENNIS R. DE FILLIPO

TVF, Jr, :gdd

May 29, 1974

Honorable Lawrence W. Pierce United States District Judge United States Courthouse, Room 2601 Foley Square New York, New York

Re: United States v. Karl "Jack" Schwartzbaum
73 Cr. 616 (LWP)

Dear Judge Pierce:

We are submitting herewith two copies of each of the following papers:

- (1) Affidavit of V. Thomas Fryman, Jr.;
- (2) Additional Affidavit of V. Thomas Fryman, Jr.; and
- (3) Government's Memorandum in Opposition to Defendant's Motion for a New Trial.

Copies of the above-described papers, except the Additional Affidavit of V. Thomas Fryman, Jr., have been served on defendant's attorney.

The Additional Affidavit of V. Thomas Fryman, Jr., is submitted with the request that it be placed under seal

Honorable Lawrence W. Pierce -2- May 29, 1974

and made a part of the record in this proceeding for the reasons stated in the Affidavit of V. Thomas Fryman, Jr. served on defendant's attorney.

Very truly yours,

PAUL J. CURRAN United States Attorney

By:

V. Homas FRYMAN, JR.

Assistant United States Attorney

Telephone: (212) 264-6174

cc: William Esbitt, Esq. 122 East 42nd Street New York, New York 10017 LAW OFFICES

WILLIAM ESBITT

OXFORO 7-0133

122 EAST 42" STREET, NEW YORK 17, N.Y.

June 3, 1974

Honorable Lawrence W. Pierce United States District Judge United States Courthouse Room 2601 Foley Square New York, New York

RE: United States v. Karl "Jack" Schwartzbaum
73 CR 616 (LWP)

Dear Judge Pierce:

This letter is submitted in response to Mr. Fryman's letter to Your Honor, dated May 29, 1974, a copy of which has been received by the undersigned together with Mr. Fryman's affidavit, sworn to May 29, 1974.

With respect to the additional affidavit of Mr. Fryman, which has been submitted to Your Honor without the undersigned receiving a copy, it is respectfully submitted that a copy should be furnished to counsel for the defendant herein for the purpose of enabling him to determine whether such information may support the motion for a new trial in the interests of justice.

In the event this request is denied and on the assumption that the affidavit discloses the names of a substantial number of fur manufacturers who allegedly paid money to Jack Glasser, it is requested that this information together with the affidavit of Mr. Fryman be accepted by Your Honor in support of defendant's application herein for reconsideration of defendant's motion for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure in the interests of justice.

Mr. Fryman has stated in his affidavit (¶6(a)) that Mr. Glasser has now disclosed to the Government that numerous other fur manufacturers paid him moneys despite Glasser's statement that there were only "five firms all together" (TR.80). Had

Honorable Lawrence W. Pierce

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Mr. Glasser told the truth on the witness stand it would have been developed that he had committed perhaps hundreds of other crimes by the receipt of these moneys.

Mr. Fryman stated in his affidavit (¶6(c)) that Glasser now admits having received \$2,000 to \$3,500 a year in cash as Christmas gifts although Glasser denied emphatically that he never received cash as Christmas gifts from the fur manufacturers (TR.151). Although this was an unqualified lie by Glasser, Mr. Fryman prefers to call Glasser's answer merely "incorrect".

Although Glasser denied emphatically and unequivocally that he never gambled in his life; that he never went to the race track in his life; that he never bet on a horse in his life (TR. 153), it is clear from the affidavit of Mr. Fryman that all of these answers were unequivocal lies although Mr. Fryman prefers to state that the answers are not "precisely correct".

It is respectfully suggested that the information disclosed in Mr. Fryman's affidavit and the information disclosed by Mr. Glasser on May 3rd, 6th, 13th and 14th, 1974 go far beyond merely "newly discovered evidence" or whether or not the additional information would or would not have produced a different conclusion by the jury.

These disclosures strike at the very heart of the Government's proof and it is respectfully suggested that in the interests of justice a new trial ought to be granted and it is, therefore, requested that defendant's original motion for a new trial be reconsidered by this Court.

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Furthermore, in the light of the information contained in the undisclosed affidavit of Mr. Fryman, it is also respectfully suggested that a hearing be held to determine whether in fact Mr. Glasser had perpetrated a fraud upon the Government by failing to disclose during their investigations the information which is contained in Mr. Fryman's additional affidavit.

Respectfully,

WILLIAM ESBITT

WE:TT

cc: Paul J. Curran, Esq., United States Attorney By: V. Thomas Fryman, Jr, Esq., Assistant UnitedStates Attorney

RECEIVED

MAY 21 1974

CHAMBERS OF LAWRENCE W. PIERCE, IL

ENDORSEMENT ORDER

The motion herein for a new trial based on allegedly newly discovered evidence is hereby denied. The reasons for the denial are substantially those contained in a Memorandum Opinion filed by this Court on June 12, 1974 denying a similar motion in United States v. Stofsky et al., 73 Cr. 614. Moreover, in this Court's view, the defendant has failed to satisfy the threshold requirement of demonstrating that the purported newly discovered evidence could not have been with due diligence discovered either before the trial or at the latest at the trial.

Defendant's request that this Court reconsider its first motion for a new trial in light of the allegedly newly discovered evidence is also denied.

SO ORDERED.

Dated: New York, New York June 24, 1974

U. S. D. J.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

: 73 Cr. 614

GEORGE STOFSKY, et al.,

Defendants. :

APPEARANCES:

WEISS, ROSENTHAL, HELLER & SCHWARTZMAN
295 Madison Avenue
New York, New York 10017
By: ELKAN ABRAMOWITZ, ESQ.
and
PAUL K. ROONEY, ESQ.
521 Fifth Avenue
New York, New York 10017

Attorneys for Union Defendants

PAUL J. CURRAN, ESQ.
United States Attorney
United States Courthouse
Foley Square
New York, New York 10007
By: JOHN SABETTA
Assistant United States Attorney

Attorney for United States of America

LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

After a two and one-half week trial ending February 28, 1974, defendants Stofsky, Hoff, Gold and Lageoles, officials of the Furriers' Joint Council, a labor union, were convicted by a jury of accepting payoffs from fur manufacturers and of other federal crimes related to the pay-off scheme. They have moved for a new trial pursuant to Fed.R.Crim.P. 33, citing newlydiscovered evidence concerning the personal finances of one of the government's chief witnesses, which directly controverts the witness' testimony at trial with respect to the source of his small fortune. Defendants assert two theories in support of the motion: first, that the new evidence conclusively establishes that the convictions were based on perjured testimony, mandating a new trial; and, second, that the government had a duty to discover the true state of the witness' finances and to disclose it, and that its failure to do so requires a new trial. For the reasons set forth below, the motion is denied.

Background

The jury trial commenced on February 11, 1974.

The indictment charged that the defendants accepted a

continuing flow of pay-offs during 1967 through 1970 from certain fur manufacturers in return for permission to circumvent terms of the union contract prohibiting overtime and subcontracting. The government presented three witnesses who testified as to the pay-offs. were manufacturers who said they made payments directly to Stofsky and Gold. The third was Jack Glasser, a former. labor adjuster for the trade association which represented the manufacturers who were parties to the contract with the union. Glasser's testimony, given under the umbrella of transactional immunity, was that he served as an intermediary, negotiating the amount and frequency of the payments, collecting the money from the manufacturers involved, and delivering the cash payments to various of the four defendants, keeping a share for himself. He testified that altogether the scheme involved a total of around \$16,000, of which he kept about \$5,000. He also testified that he never banked his share, but simply spent it as he received it.

There was testimony at the trial with respect to the fur garment industry in New York City which tended to provide a circumstantial background in support of Glasser's story. The jury heard that the industry is

. - 3 -

relatively small and contained geographically; that its labor requirements are seasonal; that the union's contract protects workers by requiring extensive benefits from the manufacturers, and by forbidding manufacturers to meet their excess labor needs with overtime or subcontracts to non-union shops. The defendants introduced some evidence to the contrary, but the jury could have reasonably concluded that the contract created a hardship for some manufacturers who sought ways to circumvent it. From that premise the jury could have reasonably inferred that if the manufacturers would pay-off anyone for protection against union enforcement, it would be union officials charged with enforcement.

Both in the trial at issue here, and in proceedings involving a related indictment against manufacturers charged with making the pay-offs, 73 Cr. 616, there was ample corroboration of Glasser's testimony that the manufacturers did violate the contract and that they paid the money to Glasser for that privilege with the assumption that it was going to union officials. This critical assumption was circumstantially supported by evidence that these particular manufacturers suffered little union trouble during the period when they were breaking the contract and making the pay-offs. But,

aside from the circumstantial evidence as to the nature of the industry and the payees' lack of union problems, Glasser's testimony with respect to his subsequent payments to these defendant union officials was virtually uncorroborated. In fact, Glasser testified that no payment was ever witnessed. He said he merely carried the cash around until he encountered the designated official to whom he would palm the payment, whispering the name of the manufacturer involved.

Altogether, in the trial of the union officials, seventeen substantive counts involving payments to these defendants went to the jury. Six counts involved payments unrelated to Glasser and were supported by the testimony of two manufacturers who made direct payments to two of the four defendants. Ten counts rested entirely on Glasser's testimony. One count was partially supported by the testimony of the manufacturer involved who said that he paid Glasser, but did not have actual knowledge of Glasser's payment to the intended union official.

Likewise, the three manufacturers who pleaded guilty to Indictment 73 Cr. 616, disavowed any actual knowledge of Glasser's subsequent transmission of their payment to union officials.

And therein lies the crux of both the theory of defense adopted by the four union officials at trial and of their motion for a new trial.

The defense attempted to develop at trial that although Glasser might have taken the payments from the manufacturers, and even had led them to believe he was using the cash to pay-off union officials on their behalf, he was in fact pocketing all of the money given to him by the manufacturers. The theory held that Glasser's scheme was viable because the union had a small enforcement staff incapable of catching more than a handful of contract violations under any circumstances. Thus, the defendants posited, Glasser "conned" the manufacturers into believing that pay-offs were necessary to fend off the union, and counted on the inability of the union to police the contract to give his scheme the appearance of continuing credibility.

Glasser was motivated to lie about the payments to union officials, defendants asserted, by his desire to avoid federal prosecution and his bitterness over loss of his pension benefits when he was terminated by the trade association for whom he worked.

Apparently in pursuit of these lines of defense, just prior to the opening of the trial, defendants subpoenaed Glasser's federal income tax returns for the years 1967 through 1972. Glasser claimed all had been destroyed except his 1972 return which he produced. It revealed a large interest income, the bulk from the East New York Savings Bank. During cross-examination on February 13, 1974, defense counsel, using the 1972 return, elicited testimony from Glasser that his personal wealth totalled some \$120,000. On further questioning he said the money was chiefly from his wife's inheritance of many years ago. On that same date, defendants subpoenaed the East New York Savings Bank's records of the Glassers' account, and moved orally for production of the remaining returns. The Court requested an offer of proof.

focused more on impeaching possibilities than on substantive matters, this Court granted defendants demand for production of the remaining original returns from the IRS files. With the cooperation of the government and Glasser, the order was expedited and the returns produced on February 20, 1974. The East New York Savings Bank records were produced at the latest on February 21, 1974,

and revealed that the Glassers had deposited \$38,000 in savings accounts there during the years 1967 through 1970, the period of the pay-off scheme.

Defendants commenced presentation of their case on February 21, 1974. They rested on February 26, 1974, without recalling Glasser, without a request for a continuance and with little if any reference to Glasser's bank accounts or income tax returns. They did produce probate records which suggested that Mrs. Glasser's inheritance was not anywhere near the size of the \$120,000 nest-egg about which Glasser had testified. On summation, defense counsel vigorously attacked Glasser's credibility, using among other items, the probate records and the revelations from the 1972 tax returns. He fully set forth the defense theory. As noted above, after due deliberation the jury convicted on all counts submitted to it.

The New Evidence

On April 22, 1974, having requested an adjournment of sentence for post-trial preparation, defendants filed this motion. It asserts that since March 7, 1974, when they first received the actual deposit slips from the East New York Savings Bank, the defendants have discovered

\$57,000 in a series of frequent cash transactions in three separate New York banks: the previously noted \$38,000 in the East New York Savings Bank; \$12,500 in the Greenwich Savings Bank; and \$7,300 in the Emigrant Savings Bank.

on May 24, 1974, the government having requested an adjournment of sentence in order to prepare a response, filed extensive papers in opposition to the motion. The government's affidavit states that the Assistant United States Attorney responsible for the prosecution interviewed Jack Glasser and his wife on May 3, 6, 13, and 14, 1974. During the course of these interviews the Glassers revealed to the government for the first time that they had received cash funds from a variety of sources during the period of time in question. These sources included, according to Glasser, his share of illegal payments to union officials far beyond the scope of the scheme Glasser had previously described to the government or to the jury.

Classer stated that his share of these additional payments was around \$7,000 for each of the years in question. The rest of the \$57,000 was explained by the sale of jewelry; Christmas gifts from manufacturers; wholesale commissions; vacation gifts from manufacturers; overtime committee payments

and miscellaneous commissions. Other errors in trial testimony by both Glasser and his wife were attributed to failure to understand the questions put by counsel.

In addition to the affidavit just described, the government has also filed an in camera submission consisting of a government file memorandum on the discussions with the Glassers. It differs, in the main, from the public affidavit in its detail with respect to the additional illegal pay-offs, setting forth names, dates and circumstances involved in each, as related by Glasser. The government has requested that such document be sealed and made a part of the record in this case, asserting that disclosure at this juncture would seriously compromise future government investigations. In the Court's view this is a well-founded request and the document has been sealed by Order of the Court dated June 6, 1974. However, it is appropriate at this time to disclose to defense counsel that the sealed affidavit reveals that Glasser now says he originally told the government only of payments from manufacturers to union officials which he had reason to believe the government already knew about; and that at the recent interviews, he and his wife initially told the government that the cash deposits could be explained, in

total, by jewelry sales. These additional facts as they bear on Glasser's credibility have been taken into account here.

Thus, since trial, the following evidence has been developed:

- 1. Glasser made a series of cash deposits totalling more than \$57,000 during the period of the pay-off scheme. This directly contradicts his trial testimony that most of his \$120,000 fortune came from his wife's inheritance some years ago.
- 2. Glasser has explained the source of the \$57,000, by stating that at least \$20,000 of it represents his share of even more pay-offs during the critical period. This directly contradicts his trial testimony that the scheme totalled \$16,000 and his share totalled \$5,000, and that he never banked any of it. But in the process it further implicates the defendants in the scheme for which they have been convicted.

The government does not contest the veracity of the defendants' documentary evidence, and concedes that Glasser's testimony about these matters was false in many respects.

The Court concludes that a government witness has

engaged in an effort to conceal information, and has given false, or deliberately misleading testimony with respect to the source of his savings.

But, new evidence revealing that a witness has testified falsely as to some matters, standing alone, is not enough to mandate a new trial. Before this Court can proceed to the merits, the defendants must show that "the material asserted to be newly discovered is in fact such and could not with due diligence have been discovered [by them] before or, at the latest, at trial." United States v. Costello, 255 F.2d 876, 879 (2d Cir.), cert. denied, 357 U.S. 937 (1958). Then, the ultimate result depends upon analysis of the new evidence and the false testimony, and the materiality of both. The standard of materiality required, in turn, depends upon the degree to which the government can be said to have been involved in the suppression, if any, of the evidence or responsible for the false testimony.

Due Diligence of Defendants

In retrospect, it would appear that the key to the "new" facts was in defense counsel's hands from the moment Glasser was cross-examined about his 1972 tax return early in the trial, or at the latest when counsel finally viewed

the transcript of the East New York Savings Bank accounts on February 21, 1974, and saw that \$38,000 (almost a third of what Glasser had earlier told him represented the total Glasser fortune) had been deposited in frequent transactions from 1967 through 1970. While at that time counsel did not know that the deposits were cash, it was still strong evidence that Glasser was not telling the truth with respect to the inheritance. But, this Court is not prepared to say that trial counsel in a complex, demanding case is bound to turn every key at precisely the right moment in order to meet the requirements for a new trial motion. Cf. United States v. Keogh, 391 F.2d 138, 147 (2d Cir. 1963). Nor does this Court believe that counsel's inadvertence was deliberate trial strategy as the government suggests. It is conceivable, of course, that counsel vecred away from further direct inquiry with respect to Glasser's wealth, fearful of eliciting before the jury the damaging explanation which Glasser has now given. But, if that were the case, the probate records which counsel did introduce on the same issue presented somewhat the same risk.

In any event, the issue of due diligence is close enough, and the matter of Glasser's performance serious

enough, that a resolution on the merits appears to be appropriate and necessary.

The Government's Duty

There are a multitude of standards current in the law for testing the merits of a new trial motion. They range from the very liberal, where a defendant need show only that with the new evidence, or without the falsehoods, the jury in the case already tried "might not have convicted" to the very strict, where the defendant must show that with the new evidence, or without the falsehoods, a jury on a retrial would "probably reach a different verdict." In large part, the standard to be applied depends upon whether the defendant can show that the government is somehow responsible for false testimony, or that it negligently failed to disclose evidence, or that it deliberately suppressed evidence.

ment instigated Glasser's false testimony, or that the government knew Glasser's testimony to be false. They do not argue that the government possessed the cash deposit slips and deliberately, or negligently suppressed them.

Instead, they assert that the government possessed Glasser's federal tax returns, and that under the circumstances the

defense and turned them over to the defendants pursuant to the principles of Brady v. Maryland, 373 U.S. 83 (1963). More generally, characterizing the state of Glasser's finances as a central issue in the case, defendants urge that the government had an obligation to conduct a pretrial investigation of Glasser's veracity with respect to these matters irrespective of what it possessed or did not possess. For the latter proposition, the defendants invoke Brady but cite only People v. Maynard (Sup. Ct. N.Y. Cty.), N.Y.L.J., Vol. 171, No. 64, p.18, col. 7, April 3, 1974.

underlying records could be seen as relevant to this case is not a wholely frivolous proposition. The state of a key witness' finances was said to be something "the prosecutors properly required . . . to be investigated" in United States v. Keogh, supra, 391 F.2d at 142, in a case involving precisely the same theory of defense as defendants have asserted here. But neither this dictum in Keogh, or Brady, or any other authoritative case cited by defendants requires such an investigation. The requirement is that the prosecution must disclose exculpatory information in its possession. It is from

possession, however buried, forgotten or overlooked, that the prosecution's obligation arises.

The defendants say that the "government" possessed

Glasser's tax returns. They offer no support for that

assertion, and it would appear that what they mean is

that the "government at large" possessed the returns on

file with the Internal Revenue Service. Given the strong

public policy with respect to secrecy of federal income

tax returns, this Court declines to hold that the tax

returns are in the constructive possession of the prosecu
tor merely because they are on file with the IRS.

Glasser's tax returns, it is not at all certain that the value to the defendants of these documents would have flagged the prosecutor's attention sufficiently to require him to turn them over. Of course, it is easy now to point out that he would have seen the size of Glasser's interest income, and surmised the size of Glasser's small fortune. In hindsight, mainly because Glasser lied about the source of the savings on the stand, this information is perceived as of some value to the defendants. But, its practical

materiality is still highly questionable and in this Court's view it is not of such a nature as to have mandated pretrial disclosure. The Court is not persuaded by the government's argument that it would violate public policy to provide such information to the defendants, under any circumstances. If the returns had been possessed, and if the portion with respect to savings interest had alerted the prosecutor, the returns themselves need not have been turned over in order to have provided the information. Further, it should be noted that tax returns are not entirely sacrosanct, once a proper showing has been made to a Court, as demonstrated by this Court's order to produce them during trial. In that light, it is perhaps noteworthy that defendants' trial demand contained the first showing in this proceeding of the importance of this issue to the defense. Their pro forma discovery motion for Glasser's "bank statements, bank books, diaries, notes, memoranda, and other relevant documents . . ." (Defs' Motion for Discovery, ¶8 July 18, 1973) did not include tax returns, and was denied by the Court as entirely unsupported.

The Standard

Having found no prosecutorial misconduct, this

Court is of the view that the applicable test is the

formulation set forth in <u>United States</u> v. <u>DeSapio</u>,

435 F.2d 272, 286 (2d Cir. 1970), <u>cert</u>. <u>denied</u>, 402 U.S.

999 (1971), and reiterated in a line of cases, including

<u>United States</u> v. <u>DeSapio</u>, 456 F.2d 644, 647 (2d Cir.),

<u>cert</u>. <u>denied</u>, 406 U.S. 933 (1972): Is the evidence of

such a nature that it would "probably produce a different

verdict in the event of a retrial."

But, the government has suggested a test more

liberal to the defendants, as set forth in United States

v. Marquez, 363 F.Supp. 802, 806 (S.D.N.Y. 1973), aff'd

without opinion, 489 F.2d 753 (2d Cir. 1974), to wit:

Would the new evidence, or the lack of the perjured

testimony "have produced a different verdict [at the

completed trial]."

Inasmuch as the result is the same

under either test, the Court will apply both.

Discussion

The new evidence produced by the defendants demonstrates that Glasser lied about the source of his savings, and it affirmatively shows that a portion of those savings has been recently deposited in cash.

The defendants do not seriously argue that it is this false testimony, or that it is the failure to state this "truth" about the cash deposits, which convicted the Standing alone, these matters are collateral defendants. to the elements of the offenses charged against these defendants. Instead, they seek to elevate the collateral to a level of materiality by asserting that "the source of these cash deposits could be explained only by concluding that Glasser perjured himself when he testified that he gave any of the monies to one or more of the defendants." Thus, they contend that the new evidence establishes that Glasser lied about what is, without doubt, the most material portion of his testimony. The new evidence establishes no such proposition. It does not directly address Glasser's testimony with respect to payments to the defendants, nor does it lead inevitably to the conclusion that Glasser lied about the pay-offs to the defendants. It is far too wide a leap in reason to assert that just because Glasser accumulated \$57,000 in cash during the critical time period that, a fortiori, a jury hearing these facts could only conclude that he kept the whole of the mere \$11,000 he said he gave the defendants. On the contrary, the figures alone are so incongruous as to lead to no conclusion at a11.

The defendants themselves, in other portions of their papers, state the wholely sensible premise that this new evidence "would indicate to a jury that there were much larger payments and/or payments from many additional sources." Even without Glasser's subsequent explanation, these two inferences of other or larger payments, or both, could have occurred to the jury, and would not have necessarily or "probably" produced a different verdict. Applying the stricter test of probable effect at a new trial, it is likely as the matter has evolved to the present complete with Glasser's explanation inculpating the defendants, that no defense counsel would actually attempt to use the evidence of the cash deposits as substantive support for the defendants' theory. The risk inherent in exposing the jury to Glasser's damaging explanation would be great.

The defendants also suggest that this evidence can be viewed as capable of destroying the credibility of Glasser solely because it shows him to have lied about the source of his funds. Under the strict test, it is still doubtful that it would produce a different verdict on a retrial. Glasser would not obligingly repeat his earlier false testimony just to provide defense

The defendants themselves, in other portions of their papers, state the wholely sensible premise that this new evidence "would indicate to a jury that there were much larger payments and/or payments from many additional sources." Even without Glasser's subsequent explanation, these two inferences of other or larger payments, or both, could have occurred to the jury, and would not have necessarily or "probably" produced a different verdict. Applying the stricter test of probable effect at a new trial, it is likely as the matter has evolved to the present, complete with Glasser's explanation inculpating the defendants, that no defense counsel would actually attempt to use the evidence of the cash deposits as substantive support for the defendants' theory. The risk inherent in exposing the jury to Glasser's damaging explanation would be great.

The defendants also suggest that this evidence can be viewed as capable of destroying the credibility of Glasser solely because it shows him to have lied about the source of his funds. Under the strict test, it is still doubtful that it would produce a different verdict on a retrial. Glasser would not obligingly repeat his earlier false testimony just to provide defense

counsel with the opportunity to impeach him with this

new evidence. The government could not permit it in any

event. It is possible, of course, that counsel could

attempt to exploit this entire episode so as to seriously

damage Glasser's credibility, but, again, it is difficult

to imagine how it might be done without raising the spectre

of a far wider, broader scheme involving these defendants.

Under all of the circumstances, the strongest argument the defendants advance is the probable impeaching effect of the new evidence, if it had been produced at precisely the right moment at the trial just concluded. That "right" moment could only have been after Glasser had testified falsely on the subject. Then, the question is, would proof that he had lied about his savings have dealt a blow to his credibility so serious as to have probably led the jury to totally discard his testimony with respect to payments to the union officials?

Assessment of a jury's view of credibility is speculative at best. But several factors lead this Court to conclude that this evidence would not have destroyed Glasser to the extent that the verdict of the jury would have been different. As it was, the jury had evidence from the probate records which established that

evidence did not supply the jury with an explanation of where the money did come from, it must have demonstrated that Glasser had not told the truth about the source of the \$120,000. There is no doubt that evidence of the recent cash deposits would have had a dramatic impact.

But, in this Court's view, it would not have changed the quantum of the impeaching effect.

In addition, the jury had totally independent evidence to support Glasser's story which would have remained unsullied. Two manufacturers had testified as to direct payments made to some of these defendants. manufacturer had testified that he gave money to Glasser with the understanding that it was going to union officials. A non-defendant ex-union official had testified that he accepted money from Glasser under similar circumstances. Also the jury heard evidence of the small and tightly circumscribed fur industry from which they might well have reasoned that the story Glasser told made sense, however untruthful he had been about the source of his fortune. Further, the jury could have reasoned from the same industry evidence that the basic flaw in the defense theory was that if Glasser knew the union lacked the manpower to enforce the contract, then all of the manufacturers must have also known. Put another way, it was reasonable for the jury to conclude that the manufacturers would not have continued to pay Glasser during a period of at least three years, unless they knew that it was necessary to payoff union officials in order to circumvent the contract, and they were convinced that he was, in fact, so doing with their money.

Given all of these factors, this Court cannot conclude that if the jury in the trial just completed had known of this new evidence of cash deposits, or the fact that Glasser lied about the source of his savings, it would probably have reached a different verdict, an acquittal; or that this new evidence would probably produce an acquittal on retrial.

The motion for a new trial is hereby denied. defendants' accompanying motion for a judgment of acquittal pursuant to Fed.R.Crim.P. 29(c), is hereby denied.

SO ORDERED.

New York, New York Dated: June 12, 1974

U. S. D.

FOOTNOTES

- This liberal test is a modification of the classic test set forth in Larrison v. United States, 24 1. F.2d 82, 87 (7th Cir. 1928), which involves a posttrial revelation that a conviction was based on See United States v. Polisi, false testimony. 416 F.2d 573, 577 (2d Cir. 1969). This test has apparently been limited to cases involving prosecutorial misconduct in this Circuit. United States v. DeSapio, 435 F.2d 272, 286 n.14 (2d Cir. 1970), cert. denied, 402 U.S. 999 (1971). It is also a variation of the applicable test for negligent nondisclosure of evidence which was in the government's possession, as set forth in United States v. Houle, 490 F.2d 167, 170 (2d Cir. 1973), which requires an assessment of ". . . whether . . . there was a significant chance that this added item, developed by skilled counsel . . . could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction."
 - 2. The strict standard is reserved for motions which can be viewed simply as based on newly discovered evidence and free from prosecutorial misconduct.

 See, e.g., United States v. DeSapio, Supra; United States v. DeSapio, 456 F.2d 644, 647 (2d Cir.), States v. DeSapio, 406 U.S. 933 (1972).

FOOTNOTES (Cont.)

the standard under <u>Giglio</u> is "whether the evidence is material and could in any reasonable likelihood have led to a different result on retrial."

4. Actually, the government has suggested that "...
the defendant must establish that the restimony was
of such a character that it probably would have
produced a different conclusion" (emphasis added).
Gov'n Memo in Opposition to Motion for a New Trial,
p. 14. Presumably, the government means a "different
conclusion" at the rial just completed.

Although the present state of law is not a model of clarity, the government's proposal strikes this Court as more liberal than required, for two reasons. First, the oft-cited footnote in United States v.

DeSapio, 435 F.2d at 286 n.14, seems to indicate that unless there has been prosecutorial misconduct shown, the analysis need not look to the probable effect of the new evidence had it been available in the past trial, but only to whether it would probably affect the result at a new trial. This is important in this case because Glasser's present explanation renders the new evidence worthless, as a practical matter, at any retrial. The new evidence could have been used with maximum impact only at the past trial.

Second, the government has said that the new evidence need lead only to a different "conclusion" not a "different verdict." Both DeSapio and Marquez require only the latter. In a close case, the difference between "conclusion" or "result" and "verdict" is critical. For instance, in this case it is extremely doubtful that the new evidence would precipitate a "different verdict," that is, an acquittal, in a retrial or the trial just past. But, it is quite possible that it might have swayed at least one juror in the past trial, and thus resulted in a mistrial. That would have been a "different conclusion" as this Court interprets the word.

TRANSCRIPT OF SENTENCE

1	UNITED STATES DISTRICT COURT
2	SOUTHERN DISTRICT OF NEW YORK
3	UNITED STATES OF AMERICA, :
4	-against- : 73 Cr. 616
5	KARL "JACK" SCHWARTZBAUM, :
6	Defendant. :
7	
8	BEFORE: HONORABLE LAWRENCE W. PIERCE, D. J.
9	
10	June 4, 1974 9:30 A. M.
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12	
13	APPEARANCES:
14	PAUL J. CURRAN, JR., ESQ., United States Attorney for the
15	Southern District of New York BY: V. THOMAS FRYMAN, JR., Assistant
16	United States Attorney.
17	WILLIAM ESBITT, ESQ., Attorney for Defendant.
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gwcg

(Case called.)

MR. FRYMAN: The government is ready, your Honor.

MR. ESBITT: The defendant is ready, your Honor.

THE COURT: Present for the government is Mr.

Fryman; present for Mr. Schwar zbaum is Mr. Esbitt and Mr. Karl Jack Schwartzbaum is present.

MR. ESBITT: I am a little hard of hearing, your

Can I impose upon your Honor to just speak a little louder? The acoustics in these courtrooms except the small one that we had is very difficult.

THE COURT: All right.

First 1 wish to announce that the court is denying Mr. Schwartzbaum's second post trial motion for a new trial based on allegedly newly discovered evidence.

The reasons for the denial are contained in the memorandum opinion which this court will file sometime this week denying a similar motion in the case of the United States versus Stofsky, et al, 73 Crim. 614.

further, in the court's view the defendant has also failed to satisfy the threshhold requirement of demonstrating that the purported newly discovered evidence could not have been with due diligence discovered either before the trial or at the latest at the trial.

Therefore, the new trial motion in this case will be denied by an endorsement order to be filed simultaneously with the memorandum opinion on the Stofsky motion.

MR. ESBITT: May I make one comment, your Honor, not with respect to your decision on the motion, but in a letter which I submitted to your Honor yesterday, and a copy of which was given to Mr. Fryman for his reply, if he felt necessary?

I also asked your Honor to reconsider the first motion which you had already denied in the light of the affidavit submitted by Mr.Fryman and in the light of the disclosures of that affidavit with respect to false testimony by Mr. Glasser.

In my letter I requested that reconsideration be given of your first motion and, number two, I asked your Honor to consider the advisability of holding a hearing to determine whether, in fact, Mr. Glasser had committed a fraud on the government by persuading the government to give him immunity where he had failed to make full and proper disclosure to the government.

THE COURT: I don't know that you have standing to make that latter request, Mr. Esbitt.

Nevertheless, I read your letter and I will reflect that consideration in the endorsement order.

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MR. ESBITT: Thank you, your Honor.

THE COURT: Mr. Schwartzbaum, will you please stand. You are before the court for sentencing. On April 4, 1974 a jury returned a verdict of guilty against you on the offenses charged in counts 1, 2 and 3 of the indictment. In substance, you were convicted of making payments to union representatives in violation of federal statutes.

For the offenses charged in those counts, the law provides a maximum punishment of up to one year in prison or a fine of up to \$10,000 or both, or some combination thereof on each count.

Mr. Esbitt, do you know of any reason why sentence should not be imposed at this time or do you have anything you wish to say on Mr. Schwartzbaum's behalf or do you have any information to present in mitigation of sentence?

MR. ESBITT: There is no reason, your Honor, as far as I am concerned why sentence cannot be imposed at this time, but I would like to address your Honor with respect to sentence.

THE COURT: All right.

MR. ESBITT: Your Honor, it has been stated by the American Bar Association Project on Criminal Justice to which your Honor referred last Friday at the time of the sentence of the union officials that one of the most important responsibili

of a defense lawyer takes place on sentencing, and I am fully aware that it is a much greater responsibility as far as the court is concerned.

I have been assured of that not only by the books that I have read, but by classmates of mine who have graced this bench of yours, your Honor, and colleagues of mine who have served with me in the United States Attorney's office and who are now members of this judiciary, and all have assured me that the responsibility of the judge is a tremendous and awesome one, and I am fully conscious of your responsibility and I am conscious of my own responsibility, and I recognize that in accordance with my responsibility, I have a responsibility not only as an advocate for Mr. Schwartzbrus, but as an officer of the court, and I speak accordingly.

Bince I have seen the presentence report, your Honor, I will touch very lightly on the facts which have already been covered, and your Honor is aware and, as the probation report indicates, Karl Jack Schwartzbaum is a graduate and has received a BA degree from New York University in 1943 and a further advanced degree of MA from the same university in 1947, and shortly thereafter he joined his father in the fur business and, as your Honor knows, he has been engaged in that fur business for a continuous period of time and right up until today.

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whom he has been married for 29 years, and who has stood by him loyally, testified on his behalf at the time of the trial and who sits in this courtroom today. They have three children. The oldest is a son, who is a doctor, a daughter Tina of 24, who is studying law at the University of Southern California and who has, to their pride, just been accepted for the law review at that law school, and a third child, the youngest, Emily, 18 years of age, who is about to enter college this fall.

Your Honor, the family life has been a most unusual one, and I must say that in all my experience of 40 years at the practice of the bar, I have yet to find a family life which has been as rewarding to themselves and to their children and to the community in which they live than their family life.

I know that your Honor has received a number of letters from friends, their rabbi, members of their business community, and I haven't seen one of them, Judge, except one. And I think your Honor has seen it also, and it is a letter from their daughter, Tina, the young lady who is a law student at the University of Southern California. I have never been touched in my entire life as I have when I read this letter. If your Honor has not read it, then may I

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request that after the sentence is over you read it?

THE COURT: I have read it.

MR. ESBITT: Then you know how touching it is.

member of the family, it is written undictated by me or by the parents and spoke from the heart of this young girl of the respect that she has for her father and the influence that her father has had upon her and the other members of their family.

His military life has been one of bravery in combat. He served in combat with the 104th Infantry Division, was honorably discharged with the rank of sergeant and still today receives disability pay from the military. But not only has he served, two generations of his family have served, because his son, Dr. Leonard, is today serving as a captain, a medical officer in the air force, and shortly will have completed his military service. His character and reputation in the community that he lives in and the community in the business life is beyond reproach.

I will remind your Honor that during the time of this case the four witnesses brought forth to testify against Mr. Schwartzbaum, each and every one of them testified to his high character and reputation.

As far as the nature of the crime is concerned, it

was not a crime of violence, it was not a crime with a dangerous weapon, bodily harm or any high degree of criminology,
nor even a breech of trust. But I don't condone this or any
other crime because crimes on the statute books have to be
observed, and I quite agree. I put it within the framework
in determining fairness that it is a misdemeanor and not a
crime of violence or a breech of trust.

I might also add to your Honor that it cannot be said that this defendant perjured himself because he didn't take the witness stand, and I think that should be taken into consideration as well.

There is one point that I must bring to your Honor's attention, and it is a point that could be made, that he has put the government to trial.

Your Honor, more than 20 years ago when I was an assistant United States Attorney in this court the first case I had was a trial before Judge Weinfeld, and after the defendant had been found guilty and he appeared for sentence I made a strong plea, and in those days an assistant United States Attorney was asked to make recommendations. It was the policy of the office. He has changed since. But in those days when I served under Judge Lombard it was our practice to make recommendations. And I strongly urged, when I was an assistant, that Judge Weinfeld, I said, should take into

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consideration the fact that the defendant in that case had put the government to a trial and, therefore, imposed a burden upon the government.

And Judge Weinfeld looked down at me and said,
"Mr. Esbitt, I will never punish a man for taking advantage
of his constitutional right to put the government to its
proof."

THE COURT: I don't think you should assume that any other judge would do otherwise.

MR. ESBITT: Thank you, your Honor. I was sure that you would follow the same principal that Judge Weinfeld and other judges do follow.

I might say that the defense in this case was not a frivolous defense and the jury took more than seven hours to reach its determination.

In a booklet which I had occasion to review before assuming my responsibility in making a recommendation for sentence, Guides for Sentencing published by the Advisory Counsel of Judges of the National Probation and Parole Association, it is stated, and I quote:

"Outright suspension of sentence is an appropriate sentence in a situation where apprehension and conviction have so thoroughly a corrective impact on the offender that supervision by probation is unnecessary."

I think, your Honor, this would be applicable with this defendant. I might point out to your Honor that this defendant has already sustained substantial punishment, if you can call it that, because of his shame and disgrace which has been imposed not only by him but upon his family. There has been a fair amount of publicity in his community, in the trade publications, and both of them have had a serious effect on him. In addition, he has been subjected to substantial financial loss because he had been a director of two listed corporations from which he had been receiving in excess of \$20,000 a year.

both, and he will be unable to rejoin either corporation as a result of the conviction. And he has suffered a loss of in excess of \$20,000 a year during that period of time and will continue to suffer that loss.

punishment which he has sustained already, and it has affected his business because even today the suppliers of skins from whom he must look to find skins in order to manufacture garments, some of them have refused to sell him at this point pending the determination of this sentence, and I might add that this is a one man business and more than 20 people are dependent upon him and his business for their livelihood.

As far as the question of whether this defendant would ever be involved in a similar or any other criminal situation, I can assure your Honor not only as his lawyer, not only as his friend, but as an advocate of this court, as an officer of this court, that this man will never appear before a court again.

I would just like to before I finish quote from the Federal Bureau of Prisons report which appears in 35 FRD at page 496, and that is this:

"The recognition that an institutional commitment may particularly in the case of a criminally unsophisticated person result in an emotional experience which is more injurious than helpful makes a strong argument in support of probation."

And, therefore, with all due respect to the Court and in compliance with my obligations as an officer of the court, I strongly urge your Honor not to impose a sentence of incarceration and to be lenient with respect to a fine.

With these comments, I leave his sentence in your hands, for 1 know full well that your judgment will be an honest, sincere and just verdict.

Thank you, sir.

THE COURT: Mr. Schwartzbaum, do you know of any reason why sentence should not be imposed upon you at this

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2	time?										
3	THE DEFENDANT: No, sir.										
4	THE COURT: Do you wish to make a statement on your										
5	own behalf or present any information in mitigation of such										
6	sentence?										
7	THE DEFENDANT: No, sir. I can't add to what Mr.										
8	Esbitt has already stated.										
9	THE COURT: All right. The Court acknowledges										
10	receipt of over 60 letters to myself and to the probation										
11	department.										
12	Mr. Fryman, does the government have any comments?										
13	MR. FRYHAN: No, your Honor.										
14	THE COURT: All right.										
15	It is adjudged that the defendant pay a fine to the										
16	United States in the sum of \$1,000 on each of counts 1, 2 and										
17	3.										
, 18	The defendant is ordered to stand committed until										
19	total fine of \$3,000 is paid or he is otherwise dis-										
20	charged by due course of law.										
21	The order that the defendant stand committed is										
25	stayed for 30 days. July 8.										
2	MR. ESBITT: What is the date, sir?										
2	THE COURT: July 8.										
	10w, Mr. Schwartzbaum, before you leave it is my										

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duty to inform you that you have the right to appeal your conviction. If you cannot afford an attorney for purposes of an appeal, you have a right to apply for leave to appeal as a poor person and the government will pay the costs of the appeal.

If your present attorney was court appointed, the court may appoint him to continue to represent you for purposes of an appeal, should there be one.

Is there anything further?

MR. ESBITT: Not as far as I am concerned, your Honor.

MR. FRYMAN: No, your Honor.

THE COURT: All right.

Thank you.

JUDGMENT AND COMMITMENT

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

No. 73 Cr. 616

KARL "JACK" SCHWARFZRAUM

, 1974 , came the attorney for the government and June Lth On this the defendant appeared in person, and by William Esbitt, Esq., counsel

IT IS ADJUDGED that the defendant upon his plea of not guilty and a finding of guilty by a

has been convicted of the offense of unlawfully, wilfully and knowingly paying and delivering and has been convicted of the onense of agreeing to pay and deliver a thing of value, to wit, momey to an employee of the Furrier's Joint Council, which represented the employees of the defendant. (Title 29, W.S. Code, Section 186(a))

as charged in counts 9,10 and 11

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT Is ADJUDGED' that the defendant pay a fine to the United States in the sum of ONE THOUSAND(\$1,000) DOLLARS on each of counts 9,10 and 11. Total fine of THEOSAND (\$3,000) DOLLARS is to be paid or defendant is ordered to stand committed until fine is paid or he is otherwise discharged by die course of law. The order that the defendant stand committed is stayed until July 8, 1974.

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2	THE CLERK: United States of America versus										
3	Karl "Jack" Schwartzbaum. Is the Government ready?										
4	MR. FRYMAN: Ready for the Government.										
5	THE CLERK: Is the defendantready?										
6	MR. ESBITT: Ready.										
7	(A jury was duly empaneled and										
8	sworn.)										
9	(An alternate juror was sworn.)										
10	(Mr. Fryman made an opening statement										
11	on behalf of the Government.)										
12	(Mr. Esbitt made an opening statement										
13	on behalf of the defendant.)										
14											
15	MURRAY L. BITTMAN, called as a witness										
16	by the Government, being first duly sworn, testified										
17	as follows:										
18	DIRECT EXAMINATION										
19	BY MR. FRYMAN:										
20	Q Mr. Bittman, by whom are you presently employed?										
21	A Lazar Wisotsky.										
22	Q What sort of firm is that?										
23	A A fur manufacturing firm.										
24	Q What is your position with that firm?										
25	A My position is sales distribution, production.										

Did you have any ownership interest in K. J.

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Q Do you know who did own the stock in that company?

A Mr. Schwartzbaum.

No, no.

Q Is Mr. Schwartzbaum in the courtroom today?

A I beg your pardon?

Q Is Mr. Schwartzbaum in the courtroom here today?

A Yes, he is.

Q Would you point him out for the jury?

A The gentleman right there (indicating).

MR. FRYMAN: Let the record show that the witness identified the defendant.

THE COURT: All right.

Q Mr. Bittman, what produce does the firm of K. J. Schwartzbaum, Inc. manufacture?

A Primarily mink, about eighty, ninety percent mink.

Then there were some fox garments produced and what we call

mink pieced garments.

Q When you say "primarily mink," do you mean mink coats?

A Anywhere from small pieces to full length coats and everything in between.

Q What would be an example of a "small piece"?

A A stole or a cape.

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for the factory?

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That is correct, approximately ten to thirteen.

Was that company a member of any manufacturers

Associated Fur Manufacturers.

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Q Mr. Bittman, are you familiar with the term "contracting" as used in the fur industry?

A Yes, I am.

Q What does that term mean?

A The term "contracting" is when a union shop will take material and have it made outside their shop into garments.

Q I'm sorry?

A They would take the skins, give them to an outside shop to have produced into garments.

Q The contractor would then be paid for what?

A For labor.

Q Was there contracting with non-union shops?

A Yes.

Q Was there any provision in the labor contract between the union and the Association with regard to this practice of contracting?

A Yes.

Q What did the contract provide?

A That a union shop does not give out contracting to non-union shops.

Q Were there penalties set forth in the contract if the firm was caught doing this?

A Yes.

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I believe 1968.

When did that occur?

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- I did.

Yes.

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Q Did you discuss the reasons for giving out contracting?

Did you discuss this with Mr. Schwartzbaum?

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- I did. A
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- What did he say to you were the reasons?
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- What we said to each other --A
- 12 13
- Recount the conversation as best you can. Q

Yes, to the best of my ability. It was getting

- 14 more difficult to compete in the fur market unless we took
- 15
- what and possibly we would be more competitive with other

a position in contracting. This would reduce our cost some-

- 16 17
- manufacturers that could be contracting.
- 18
- It was cheaper to manufacture goods using contractors?
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- A Yes.
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- Why was that?
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- The contractor did not have the overhead that most

manufacturers had - employment of sales people, bookkeeper,

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- model, other type of help necessary to run a fur business.
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Also they were not affiliated with a union, and I am talking

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about non-union contractors; they were not affiliated with a union and did not have to provide the fringe benefits which the union employees were supplied from the employer to the union.

Q What sort of fringe benefits were those, Mr. Bittman?

A Health and retirement, vacation pay, and at one point the contract provided for a minimum payment to the union of approximately \$12 or \$13 hundred, whether the worker worked a full year or not.

Q When you and Mr. Schwartzbaum decided to begin this practice of contracting in violation of the union contract, were you concerned about detection by the union?

A We were concerned about being caught. I don't know what you mean by "protection" --

Q You were concerned about being caught by the union?

A Yes.

Q What steps do you know about were taken to avoid getting caught?

A I used the utmost caution in distributing the skins to my contractors and asked them also to be very cautious in delivering the garments. I kept the number of contractors at a minimum rather than distribute to

were not reflected on the regular books of the Schwartzbaum

Do I understand that payments from the account

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firm?

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That is correct.

O How were funds deposited into the account?

A A check was drawn from K.J. Schwartzbaum, Inc., made out to Murray L. Bittman. I then deposited the check or had it deposited to my personal account. At the same time this was done by check was issued to M.L.B. Company for the equal amount that was deposited to my account.

Q What payments were then reflected on the books of the firm of K.J. Schwartzbaum, Inc.?

A Only checks made out to Murray L. Bittman.

Was this M.L.B. account used for any purpose
 other than to pay contractors?

To the best of my knowledge, that was the only purpose for the M.L.B. account.

O You had the authority to draw checks on the M.L.B. account?

A Yes, I did.

Q Did anyone else?

A Mr. Schwartzbaum.

Where are the records of the M.L.B. account now?

A At the firm of K.J. Schwartzbaum.

Ω All of the monies that you deposited into the M.L.B. account, to your knowledge, were used to pay contractors, is that correct?

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That is correct.

O Do you have in your possession the checks on your account which you drew to make deposits into the M.L.B. account?

A I had.

Ω Where are they now?

A Mr. Sabetta has them.

Ω You brought them with you this morning?

A Yes, I did.

Ω Are those the echecks you brought with you this morning?

A Yes, they are.

Ω The first year of contracting I believe you said was 1968?

A To the best of my knowledge.

Q Would you give me the checks through which you made deposits into the M.L.B. account for 1968?

A I believe they are in order.

MR. FRYMAN: I'd like the clerk to mark these fifteen checks as Government's Exhibit 5 for identification.

(Government's Exhibit 5, marked for identification.)

O Mr. Bittman, I show you again Government's

Exhibit 5 for identification. I ask you to look at that

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which you made deposits into the M.L.B. account for the year

Do you have with you today the checks through

That is correct.

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Approximately \$56,000.

account in 1969?

That amount was all used to pay non-union 0

amount of the deposits which you made into the M.L.B.

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2 contractors?

That is correct.

Mr. Bittman, was the Schwartzbaum firm every fined in any way by the union or the impartial chairman or a committee of the union and association for contracting?

Yes, we were. A

In the years 1968 or 1969?

No. A

No fines at all for contracting? Q

Not to my knowledge, in those years. A

Did you continue to use non-union contractors Q in 1970?

We did.

Do you have with you today the checks which you deposited to the M.L.B. account up through the end of July, 1970?

> I do. A

Could I have those checks, please? 0

These are the checks to the end of July, 1970. A

MR. FRYMAN: I would like the clerk to mark these seventeen checks as Government's Exhibit 7, for identification.

> (Government's Exhibit 7, marked for identification.)

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lhv Bittman-direct Mr. Bittman, I give you back Government Exhibit 7 for identification and I ask you to look at it and briefly identify the documents contained in that exhibit for the jury. They are my personal checks drawn to M.L.B. Company, issued to M.L.B. Company.

For what period?

From January through the end of July, 1970.

MR. FRYAMN: The government offers Exhibit 7 into evidence.

MR. ESBITT: No objection.

THE COURT: Received.

(Government's Exhibit 7, received in evidence.)

Mr. Bittman, I show you Government's Exhibit 7 in evidence. I ask you to look at those checks and tell me the approximate amount of your deposits into the M.L.B. account for the period January, 1970 through the end of July, 1970? *

Approximately \$60,000.

Was that amount used to pay non-union contractors Q for the Schwartzbaum firm?

A That is correct.

Approximately what percent of the total garments O

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union with respect to importing?

There was.

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when you began to work for the firm?

Who was the labor adjustor for the association

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working with the Schwartzbaum firm?

A To the best of my knowledge, it was Mr. Jaffe.

Who was the union business agent when you began

Ω Was he ever replaced as the union business agent

details about his finances?

No, sir.

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	Ω	Di	id	Mr.	Sch	wart	zbaum	eve	r t	tell	you	tha	at he	9
ever	paid	any	mo	nies	to	Mr.	Glass	ser :	to	be	paid	to	Mr.	Hoff?

No, sir. A

lhv

Did he ever tell you that he ever paid any monies to Mr. Jaffe?

No, sir.

MR. FRYMAN: No further questions.

THE COURT: We will interrupt here for our luncheon recess. We will resume at two o'clock.

Members of the jury are instructed not to form or express an opinion about the case or to discuss the case with anyone. You shouldn't talk about it among yourselves. We will resume upstairs in courtroom 2804. Mr. Kennely is going to show you where that courtroom is.

Mr. Witness, step down. Counsel and witnesses and jurors will assemble then at two o'clock in courtroom 2804. Madam Forelady, will you lead the jury out?

(Luncheon recess taken.)

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AFTERNOON SESSION

2.00 P. M.

(In open court, jury present.)

MURRAY L. BITTMAN, resumed.

THE COURT: You are still under oath, sir.

Mr. Esbitt, you may cross examine.

CROSS EXAMINATION

BY MR. ESBITT:

- O Mr. Bittman, this morning you produced at the Government's request certain checks of yours which were deposited to the account of M. L. B., is that right?
 - A That is correct.
- Q And you produced checks for the year 1968, 1969 and the first six or seven months of 1970. Did they ask you to produce the checks for the last six months of 1970?
 - A They did not.
 - O Do you have them here?
 - A Yes, sir.
 - O May I see them?
- A Surely.

MR. ESBITT: Mark these for identification, please.

(Defendant's Exhibit A was marked for

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identification.)

- o Mr. Bittman, do you have with you any checks of yours deposited in the M. L. B. account for the year 1971?
 - A Yes, sir.
 - O Do you have them with you?
 - A Yes, sir.
 - O And for 1972?
 - A Yes, sir.
 - O And for 1973?
 - A Yes, sir.
 - May I have them produced?
 - A Surely.

MR. ESBITT: May we have the 1971 checks marked for identification as one exhibit, the 1972 checks marked as one exhibit, and the 1973 checks marked as a separate exhibit?

(Defendant's Exhibts B, C and D were marked for identification.)

- O Contracting in the fur industry was not a crime, was it? It was merely a violation of the collective agreement between teh manufacturers and the union?
 - A That is correct.
 - 9 Would you tell us again, please, what your duties

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were when you wereassociated with Mr. Schwartzbaum in the fur industry?

A My duties involving contracting were taking -was taking the skins and giving them to the contractors and seeing that they were produced into finished garments. My other duties were selling and distribution of merchandise.

Is it fair to say that you were pretty much in charge of the entire operation of the Schwartzbaum company except for the finances?

- Yes, sir.
- Is that a fair statement?
- Yes, sir.
- Is it not true that during 1968 and 1969 Mr. Schwartzbaum traveled a good deal?
 - That is true.
- And he was away from his place of business many, many months during the course of the year?
 - Yes, sir. A
 - It was you --
 - Counselor, I will say weeks rather than months.
 - Weeks at a time?
- Yes. No, not weeks at a time. During the course of a year --
 - Weeks during the course of the year?

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A Yes. It may involve two or three months before
-- yes, possibly. Excuse me. Yes, I think so.

O During the time that you held this position or association with Mr. Schwartzbaum, you gave out contracting, did you not?

A That is correct.

Q And when you gave it out, you knew it was in violation of the collective agreement?

A Yes, sir.

Q I believe you testified on direct examination that there came a time when Mr. Schwartzbaum's firm was first caught for contracting and then fined \$3,500?

A That is correct.

Were you in the place of business at the time
this happened?

A Yes, sir.

O And you were familiar with it?

A Yes, sir.

O And that was when?

A In the fall of 1970, I believe.

Q September 1970?

A Yes.

MR. ESBITT: May I have that document?

THE COURT: Counsel, Exhibit A, do you want

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those now?

MR. ESBITT: I will come to those in a minute.

(Defendant's Exhibit E was marked for identification.)

MR. ESBITT: If your Honor please, I offer in evidence the report, or the decision, of the Impartial Chairman of the Conference Committee of the fur industry imposing a fine of \$3,500 upon K. J. Schwartzbaum, Inc. for doing contracting work in September of 1970.

THE COURT: Any objection?

MR. FRYMAN: Your Honor, this document has already been marked as Government Exhibit 3 for identification. It was the Government's intention to introduce this as a Government exhibit --

MR. ESBITT: I object, if your Honor please.

The Government has not introduced it in evidence. I am introducing it --

THE COURT: Just a moment, please. We won't bicker. Counsel, do you wish to remove your marking, since Mr. Esbitt is now offering it?

MR. FRYMAN: It was our preference to introduce this document as a Government exhibit.

MR. ESBITT: I object, if your Monor please.

THE COURT: For the time being, we will mark it

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Defendant's Exhibit E for identification.

MR. ESBITT: I am offering it in evidence.

THE COURT: And there is no objection, is

MR. FRYMAN: No objection.

THE COURT: Received.

in evidence.)

(Defendant's Exhibit E was received

Mr. Bittman, after your firm, Mr. Schwartzbaum's fi4m, was caught for contracting and a fine of \$3,500 was imposed upon that firm, did you continue to give out contracting for the Schwartzbaum firm?

A I remained quiet for a while and then I went back gradually.

O Do these checks, Defendant's Exhibit A, B, C and D, reflect payments to the non-union contractors for the period subsequent to the day when the Impartial Chairman imposed a fine of \$3,500 upon the Schwartzbaum firm?

MR. FRYMAN: Objection, your Honor. Could we have an offer of proof as to the relevance of this line of questioning?

THE COURT: I am going to sustain the objection.

MR. ESBITT: May I be heard, your Honor?

No. I will just make the ruling THE COURT:

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sustaining the objection at this stage in the case. I will assume that the objection is that it is beyond the scope of the direct. Is that so?

MR. FRYMAN: Yes, your Honor. And --

THE COURT: You will have your opportunity at a later point, if you wish to proceed with it further, but at this point I will sustain the objection.

O You continued to give out contracting not only for the second half of 1970 but also during 1971, is that right?

A Yes.

MR. FRYMAN: Same objection, your Honor.

THE COURT: Same ruling.

O All the payments that were made to contractors concerning which you testified are all reflected in your checks which have already been introduced in evidence, other checks, as well as the checks of M. L. B. company, is that true?

A Yes, sir.

O The nurpose of having the M. L. B. company set up and using the checks of the M. L. B. company was to attempt to conceal from the union the fact that you were using non-union contractors in violation of the agreement, isn't that so?

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A That is correct.

O You weren't trying to cheat the federal government of anything, were you?

A No, sir.

O From your knowledge and experience in this industry, it was not an unuaual practice for manufacturers in this industry to give out work to contractors in violation of the agreement?

MR. FRYMAN: Objection.

MR. ESBITT: Did you overrule the objection, your Honor?

THE COURT: Not yet.

MR. ESBITT: If there is a doubt --

THE COURT: I will overrule the objection. Go

Q Would you like the question asked again, Mr. Bittman?

A No, sir, it is not neessary. It is not an unusual procedure in the fur business.

O It was an unusual procedure for m anufacturers in the fur industry to give out work to non-union contractors, is that right?

A Yes, sir.

Q They took their chances of getting caught by the

And do you know his children?

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A Yes.

You know other people who know the defendant, do you not?

Oh, yes.

Do you know Mr. Carl Schwartzbaum's reputation in the community for honesty, trustfulness and for being a law abiding citizen?

> Yes, sir. A

What is his reputation?

In the fur industry, Mr. Schwartzbaum enjoys a A reputation as a man of honor, intelligence, integrity --

THE COURT: He didn't ask you those questions. He asked you a very specific question.

Read it back to the witness, please.

MR. ESBITT: May I redirect the question? THE COURT: Why don't we read it back, unless

MR. ESBITT: No.

(Record read.)

you wish to withdraw this one.

THE COURT: Honesty, trustfulness and being a law abiding citizen.

THE WITNESS: Mr. Schwartzbaum enjoys the reputation of those attributes.

MR. ESBITT: No further questions.

MR. FRYMAN: No redirect, your Honor.

THE COURT: Thank you, Mr. Bittman. Would you step down.

(Witness excused)

MR. ESBITT: Does your Honor wish to permit me to be heard with respect to these exhibits?

THE COURT: No. Why don't you come to the side bar and I will speak to you here.

(At the side bar)

THE COURT: Here is the point. I am not going to prevent you from bringing that out. It is just that in this portion of the trial, this part of the Government's direct case, I think that I will sustain the objection.

If you wish to proceed to develop it as part of your own case at a later point, then certainly that's another matter.

MR. ESBITT: Except that, first of all, I have the right to cross examine him in this area because the Government has indicated in its opening and in the questioning of this witness that they stopped in July.

THE COURT: That is their prerogative.

MR. ESBITT: But it is my prerogative --

MR. FRYMAN: The jury can hear most of this.

THE COURT: I made my ruling. You may do it

as part of some other portion of the case, if you choose

to. Right now it is beyond the scope of direct and it is

discretionary with the Court.

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v Schwartzbau lhv l ake 2 p.m. G L A S S E R, called as a witness 2 JACK on behalf of the government, being first duly 3 sworn, testified as follows: 4 DIRECT EXAMINATION 5 6 BY MR. FRYMAN: Mr. Glasser, where do you presently reside? 7 8 Miami Beach, Florida. Are you testifying here today under a warrant 9 0 of immunity from the government? 10 11 I am. What do you understand that that grant of 12 13 immunity means? That I have a grant of immunity for everything 14 except for lying, for perjury. 15 What do you understand can happen if you commit 16 17 perjury in your testimony? That I could be jailed for it. 18 When was immunity given to you in connection 19 20 with this proceeding? I couldn't give you the precise date. It was 21 sometime in April of 1970, I think, or -- '70. 22 23 What were the circumstances under which the government offered to give immunity to you for your testi-

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A That I would tell the truth on everything that I know about the events that they confronted me with.

Ω Did you have an interview with a representative of justice?

A I did.

Q Who was that?

A Mr. Hinkley. Attorney Hinkley, U.S. Attorney HInley.

Might that interview have been in 1972?

A It could have been. The dates of when the interview took place are just not clear in my mind. Whenever the records show, that is when it was.

 Ω Did you give any information to Mr. Hinkley before immunity had been granted to you?

A No, I didn't.

Ω After immunity has been granted to you, did you speak with Mr. Hinkley about conditions in the fur industry?

A I did.

 Ω Have you testified in another trial involving the fur industry?

A I did.

Q Did that trial involve individuals other than Mr. Schwartzbaum?

A Yes, they did.

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1	1hv 3 Glasser-direct
2	O Did you also testify before the grand jury
3	Mr. Glasser?
4	A I did.
5	Ω Did you understand that that grant of immunity
6	also applied to your grand jury testimony?
7	A I certainly did.
8	Q Mr. Glasser, are you presently employed?
9	A No, I am not.
10	Ω Are you retired?
11	A I am.
12	Ω Who was your last employer?
13	A The Associated Fur Manufacturers, Inc.
14	Ω What type of organization is the Associated
15	Fur Manufacturers, Inc.?
16	A It is a membership organization of fur manufac-
17	turers.
18	Ω What function does this Association serve?
19	A Well, it is a function for their mutual benefit
20	regarding a labor contract that is negotiated with the
21	union on behalf of those members that belong to the Asso-
22	ciation.
23	Ω What was your title, Mr. Glasser?
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25	Ω How many years did you have that position of

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2 labor adjustor?

- A Thirty-four years.
- Q What was your salary when you left?
- A \$225 a week.
- O You left when?
- A It would be the last -- September of 1970.
- What have been your sources of income since
 you left the Association?

MR. ESBITT: I object, if your HOnor pleases.

I think it is wholly irrelevant. His income after he left
the Association has nothing to do with this trial.

THE COURT: Sustained.

O At the time you left the Association in 1970, Mr. Glasser, did you and Mrs. Glasser have any savings at that time?

MR. ESBITT: I object, if your Honor please.

THE COURT: Sustained.

Q Mr. Glasser, focusing on the period of 1968
to 1970, approximately how many fur manufacturers in New
York City were members of the Associated Fur Manufacturers:

A My best guess there would be --

MR. ESBITT: I object, if your Honor please.

I don't think we have guess work during the course of this trial.

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0 What is your best estimate?

A My best estimate would be about 325.

O Are most of those manufacturers located in any particular geographic area?

A Ninety percent of them are located in an area between 27th Street and 30th reet, between Sixth and Eighth Avenues.

Q Are the employees of the Association members represented by any union?

A The employees of the Association?

Ω Yes.

A No.

Q The employees of -- let me withdraw that question and rephrase it. Are the employees of the manufacturing firms which are members of the Associated Fur Manufacturers represented by any labor union?

A Yes, they are.

O What is the name of that union?

A The Furriers Joint Council of New York.

O Are there other fur manufacturing ships where the employees are not represented by a labor union?

A Yes.

O Do these shops go under any particular name or any general name?

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'70, I was not there a full year, I wouldn't

You mentioned a contract I believe with the

Council of New York.

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Associated Fur Manufacturers regarding labor matters. Who were the parties to that contract? A The parties to the contract were the members of the Associated Fur Manufacturers and the Furriers Joint

Was the contract between the individual members and the union or between the Association and the union?

It was between the Association on behalf of the members of the Association.

O Mr. Glasser, I show you Government's Exhibit 1 for identification and also Government's Exhibit 2 for identification. I ask you if you have seen those documents before?

I have. I have seen them both.

Would you breifly identify each document, starting with Government's Exhibit 1.

Government's Exhibit 1 is the contract in force during the years of 1965 to 1969. Exhibit 2 is from 1969 to 1972.

MR. FRYMAN: The government offers Exhibits 1 and 2 for identification.

MR. ESBITT: No objection.

THE COURT: Received.

(Government's Exhibits 1 and 2, received.)

Schwartzbaum

zbaum is the

1	lhv Glasser-direct	44
2	O Mr. Glasser, was the firm of K. J. Schwa	rtzba
3	Inc., a member of the Associated Fur Manufacturers,	Inc.,
4	in the period 1968 through 1970?	
5	A They were.	
6	Ω Who owns that firm?	
7	A As far as I know, Mr. Jack Schwartzbaum :	is th
8	sole owner of the business.	
9	Ω Do you know Mr. Schwartzbaum?	

- 0 Is he present in this room today?
- Yes, he is.

I do.

- Would you point him out?
- It is the gentleman right there.

MR. ESBİTT: Conceded, your Honor.

THE COURT: All right.

- What sort of products does the Schwartzbaum firm manufacture?
 - Mink garments.
- Approximately how many employees did they have in the period 1968 through 1970 that were covered by the union contract?

My best estimate of that would be between ten and twelve.

Are you familiar with the term contracting as used in the fur industry?

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- A Yes, I am.
- Q What do you understand that term means?
- A That term means that you farm out goods, furs, to be manufactured by non-union sources in violation of the terms of the agreement.
- Ω You say in violation of the terms of the agreement. Did the contract for the period 1965 through 1969 which is Government's Exhibit 1, deal specifically with the practice of contracting?
 - A It does.
- O Would you look at that contract and tell me which article concerns contracting?
 - A Article 19, Section I.
 - Ω Is there an index in the front of the contract?

 THE COURT: You may lead him on this question.

MR. ESBITT: If your Honor please, the document is in evidence and I think the document speaks for itself.

THE COURT: It does speak for itself but

counsel may make reference to it and ask questions about it.

THE WITNESS: I have it here. That is Article 16 Section I.

- Ω That is the section that deals with the practice of contracting?
 - A Yes, it does.

1	lhv Glasser-direct 46
2	Ω Is contracting permitted under that contract?
3	A Under this contract?
4	Ω Yes.
5	A Contracting was not permitted.
6	Q It was not permitted?
7	A It was not permitted.
8	Ω Are there penalties set forth in the contract
9	for firms that are caught contracting?
10	A Yes, there are.
11	Q What are the sort of penalties, I am not
12	asking you to give us a detailed account of the contract,
13	but, generally, what sort of penalties were available under
14	the contract.
15	A Where a system of contracting is proved, that
16	is a regular pattern of giving out work, the firm would be
17	liable for a suspension from the Association for a period of
18	three months.
19	Ω What were the consequences of suspension from
20	the Association?
21	A Well, the union could then deal with the firm
22	directly and assess any penalty they thought they could get
23	or any penalty they thought the violation warranted, without
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the association being able to intercede for the firm.

Could the union strike the firm?

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A The term importing, or as it is also known as jobbing, means buying a complete garment from a source other than your own factory and paying for that garment to -- paying for it when you buy it.

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O Were there limitations in both of those contracts on importing by member firms?

A Yes, there were.

O Were there penalties if those limitations weren't adhered to?

A Yes, there were.

O Mr. Glasser, what body had the responsibility for instituting proceedings against a member firm for a violation of the provisions that dealt with contracting and importing?

A The body was called the Committee of Immediate Acts.

Q Was that the body that passed on complaints involving these practices?

A This body consisted of one member of the union, a representative of the Association; and if a complaint was filed by the union, the union representative and the Association representative would visit the firm and try to adjust the matter.

Q But the complaint was initiated by the union?

A The complaints were always initiated by the union.

O And then the next step was a joint investigation by the Association and the union?

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That is correct.

Who participated in such a joint investigation on behalf of the Association?

I did.

That is, you as the labor adjustor?

I as the labor adjustor for the shops that I A handled.

- One of your shops was the Schwartzbaum shop? Q
- It was. A
- Who participated in such an investigation on behalf of the union?
 - A gentleman by the name of Harry Jaffe. A
 - What was his title? 0
 - Union Representative. A
 - Is he also inown as the business agent? 0
 - Or the business agent.
- After this joint investigation by the Association and the union, what was the next step? Who then had the responsibility of prosecuting any such proceeding?

If the matter could not be adjusted by the respective parties, that is, Mr. Jaffe and myself, it was then referred by the union to an Impartial Chairman, who would hear the facts and decide on the facts as presented by both sides.

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O Did the union have discretion whether or not to refer this matter to the Impartial Chairman?

A They did.

Q You mentioned earlier the committee, I believe, on --

A Of Immediate Acts.

O Could a contracting dispute also be referred to that committee?

A Oh, yes.

Q Who was represented on the committee?

A It would be Mr. Jaffe and myself.

O Did the union have discretion as to whether or not they wanted to prosecute a contracting complaint against a member firm?

A The discretion was theirs.

O It was in the union's hands?

A It was always in the union's hands.

Q Who within the union had the responsibility for calendaring cases before the Impartial Chairman?

A A Mr. Hoff.

O What was his full name?

A Charles Hoff.

O What was his title in the union?

A Assistant Manager.

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	Q	Did	Mr.	Hoff	have	any	respo	ons	sibility	in	determin-
ing	penal	ties	to b	e as	sessed	aga	inst	a	member	fir	m?

- A Not exclusively, no.
- Q Would he make recommendations?
- A se might ask for an amount, and then we would try to, you know, adjust it.
- O Would he represent the union in proceedings before the Impartial Chairman?
 - A He and the business agent involved in the shop.
- O You said that you were the labor adjustor for the firm of K. J. Schwartzbaum, Inc., is that correct?
 - A That is correct.
 - O During what period did you have this position?
- A For a long time. I couldn't give you a date, but for many years.
- Q Did your representation of that firm begin before 1960?
 - A It is possible that it did.
 - O When did it end?
 - A It ended July -- the end of July 1970.
- O During that period, who was the Lusiness agent for the union?
- A There were different business agents from '69 to '70 or whatever years that I had it. There was not one man;

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O Did you go over?

A I did.

O What happened when you walked into the firm?

A He asked me to come into his private office.

He had a little private office off the showroom, where there was a sliding door, and that door was closed, and we sat in that office.

- Q And he closed the door when you went in?
- A He closed the door.
- O What did he say to you at that meeting?
- A He told me that he was importing furs and was giving out some contracting and could I see to it that he would have no headaches by doing so.
 - Q Headaches from whom?
 - A From the union.
- O Did he say why he wanted to give out contracting and import garments?
- A Well, why he wanted to give out contracting and give out -- and import garments were two separate items.

MR. ESBITT: If your Honor please, I am going to object to the form of this question. I think counsel must be limited to asking the witness the conversation and not suggesting answers for the witness.

THE COURT: Try not to lead, Mr. Fryman, will

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you, in this area?

What did he say about contracting?

MR. ESBITT: If your Honor please, that is exactly what I object to.

THE COURT: Overruled as to that. You may put that question.

What did he say about contracting?

Mr. Schwartzbaum told me that he had a nice set of workers now, about ten or twelve, or whatever amount he had, that he did not care to put on additional workers to load up his shop with more workers, he just wanted to get along with what he had, and that he was giving out work, the excess work that could not be produced in his shop by the amount of workers he had, to contractors.

- Did you say anything to Mr. Schwartzbaum?
- Yes, I did. A
- What did you say to him? 0
- I told him that I would have to let him know whether I could get him permission to have it done.
- What did you do after that meeting with Mr. Schwartzbaum?

A I met with --

MR. ESBITT: If your Honor please, I am going to object to the witness testifying what he did afterwards Honor?

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unless it is in the presence of the defendant. This is not a conspiracy case, this is a straight substantive case, and unless it was done in the presence of the defendant it is pure hearsay and inadmissible, both the conduct and any conversation.

MR. FRYMAN: May we be heard on this, your

THE COURT: Just a moment. Let me think a

(Pause)

All right, I will hear counsel in the robing room.

(In the robing room.)

MR. FRYMAN: Your Honor, Mr. Esbitt is correct that there is not a specific conspiracy count in the indictment. However, I believe there is ample authority that where the facts are such that a conspiracy existed, it is not necessary to have a specific conspiracy claim in an indictment in order to bring out testimony of co-conspirators.

while, as I say, he is correct that there is not a specif conspiracy count here, there was an arrangement or a joint venture between Mr. Schwartzbaum, Mr. Glasser and Mr. Hoff for these payments to go from Mr. Schwartzbaum to

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Mr. Glasser and then on to Mr. Hoff. We believe it is appropriate to elicit Mr. Hoff's answers in his conversations with Mr. Glasser.

MR. ESBITT: First of all, there is no indictment for a conspiracy, your Honor.

THE COURT: He concedes that.

MR. ESBITT: He concedes that. What he is trying to do is pull himself up by his own bootstraps. He has got to prove that any testimony or any conduct by this witness outside the presence of the defendant must be part of a plan or scheme, and he has not proven that, your Honor, not a bit. He has no testimony that there was any suggestion by Mr. Schwartzbaum that he should go to see Mr. Hoff. It is not in the conversation in this trial or in any other trial.

Therefore I submit that in that absence of getting an instruction or a direction from the defendant to go to Mr. Hoff, he is barred from testifying to where he went and whom he sar and what conversation he had or what It is completely outside of the scope of this he did. trial, your Ho. or.

I say you admitted it in the course of the other trial because it was a conspiracy, and I read the record and I think your Honor was probably right in permitting it,

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because it is part of a conspiracy. At least it was alleged in that case and it was submitted on that theory and on that basis alone.

In this case there is a nure substantive charge, as the indictment is clear. There is no aiding and abetting suggested, there is no aiding and abetting indictment, there is no aiding and abetting charge, there is no conspiracy charged.

For counsel to say, "Well, it is implied" would defeat the whole purpose of hearsay, hearsay conduct and hearsay testimony.

be made on the basis of whether there is an aiding and abetting charge, but in this circuit, as I understand the case law, the Second Circuit has held that an aiding and abetting is impliedly charged in every indictment, whether it is set forth specifically or not.

But I don't think that that need be the basis of the ruling here. My recollection of the law, Mr. Esbitt, is as Mr. Fryman has stated it, that even though there is not a conspiracy charged, if they can make a good faith offer of proof, as no doubt they can in this case, based on our knowledge of what has transpired heretofore, that there was a conspiracy, they may proceed to go down

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that road even though the defendant is not charged with it. Do you have a citation on that?

MR. FRYMAN: I don't at hand. But, your Honor, I can get you one.

THE COURT: Do you recall the title of the case?

MR. SABETTA: I can give you citations for two different propositions, your Honor, if I may interject here. There are a legion of cases, I am sure Mr. Esbitt must know, where the proposition has been upheld by the Second Circuit, to wit, that even thouh a conspiracy has not been charged or even though a joint venture has not been alleged, where the Government can show by a fair preponderance that such exists, statements in furtherance of it are admissible against the defendant on trial, if he is shown to be a member of that joint venture.

I can't believe that Mr. Esbitt would gainsay that proposition. But, m ore importantly, in this particular area there is a case directly on point called United States v. Anunciata. I don't remember the citation offhand, but it happens to have been a Taft Hartley case where a similar question came up, and it is not a recent case, early 1960 or late '59 case, somewhere in the 200 Fed. 2d, and I can get you that case.

MR. ESBITT: I would like to see that citation because it is vital to this case, and I ask your Honor to declare a recess for the purpose of checking this out.

If this testimony is permitted, your Honor, I don't have to tell you the impact upon the jury. It is vital to this case. I think that the Government is completely wrong in this case.

I assume, whatever ruling your Honor comes to, it will cover not only his testimony of where he went and whom he saw but also is your Honor ruling with respect to conversations the same thing?

MR. FRYMAN: I thought your objection only went to the conversation.

MR. ESBITT: My objection started immediately when you asked him where he went. I want to stop it at the inception of this line of questioning because I think it is wholly improper in this case.

MR. SABETTA: There is no such thing that I have ever come across labeled hearsay conduct. Conduct is not hearsay, Mr. Esbitt, and there is no rule of evidence which proscribes admitting evidence of conduct on a hearsay theory. I don't understand your objection on that.

MR. ESBITT: If your Honor please, the damage would be the same to the defendant if you permit this witness

and went to see Mr. Hoff. I submit that that is improper as well as any conversation.

MR. SABETTA: It seems to me also, your Honor,
I don't want to preempt Mr. Fryman here, but we have talked
about this and there will be evidence in this case from
Mr. Glasser, we believe, wherein the name Mr. Hoff was
mentioned and discussed after permission was received from
Mr. Hoff, and certainly it seems to me at this stage Mr.
Esbitt's objection is premature.

The Government recognizes it has the burden to establish by a fair preponderance any joint venture theory, but the rule is quite clear that the order in which evidence comes in is at the Court's discretion, and it is frequently admitted subject to connection. We understand that.

of the Anunciata case before he goes out. I think it may help him understand the Court's rulings in this regard.

MR. ESBITT: I need hardly mention to your
Honor that if the damage is done, then your Honor will
direct thejury to disregard the testimony when the damage
has already been done. That is what at the inception of
the start of this type of questioning of the witness I must
protest it and base my objection on the record.

This is not a situation where the testimony can come out subject to connection or subject to anything else, because once it comes out the damage is done.

MR. SABETTA: That is true of every conspiracy case.

MR. ESBITT: This is not a conspiracy. Let me just note for the record that this is not a conspiracy case.

THE COURT: Counsel, you might want to start here in this Anunciata case with this paragraph, "We think it follows," and then you might want to go back a few paragraphs.

MR. ESBITT: I will stop right at the first sentence. "We think it follows that an employer who makes or agrees to make a payment to an employee representative forbidden by" so and so "is engaged in a criminal enterprise jointly with the recipient."

At this point there is no proof --

THE COURT: Why don't you read a little further back? I am only taking a moment out here so that you can have an understanding of what my ruling is going to be here. The preceding paragraphs may be a little more helpful.

(Pause)

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MR. ESBITT: I will call this to your attention in the footnote:

"In any event, the Wharton Rule would not be applicable here since at least two persons other than the payer and the receiver knowingly participated in a criminal enterprise."

In this case we don't have two persons. All we have, as far as I know, is the alleged payer, the defendant, the intermediary, Mr. Glasser, who is testifying, and the union official.

THE COURT: All right. You have your record.

Why don't you go back out. I am going to overrule the

objection and --

MR. ESBITT: Are you basing it, your Honor, on the Anunciata case?

THE COURT: And other Second Circuit cases which do not come to mind at the moment by citation, but essentially it is the ruling of the Court, and that is that.

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(In open court.)

THE COURT: The objection is overruled.

MR. FRYMAN: Would the reporter read back the last question?

(Pending question was read back by the reporter.)

A I told Mr. Schwartzbaum that I would let him know whether anything could be done. I then met a day or so later with Mr. Hoff who was the assistant manager of the union.

What did you say to Mr. Hoff?

A I told Mr. Hoff what the firm was requesting.

I told him that the firm would like the privilege of jobbing from union and non-union sources and giving out contracting, that is the excess work that he has that his shop could not produce.

O What did Mr. Hoff say?

A Mr. H off said it would be okay.

O Did you meet frequently with Mr. Hoff?

A Oh, almost on a daily basis.

O Had you ever made any payments to Mr. Hoff from any other fur manufacturer?

A Yes, I have.

O What other manufacturers?

- 11		
1	1hv 2	Glasser-direct
2	Α .	Well, there was Sherman Brothers, for one,
3	and Chateau	Furs, for another.
4	Q	In what years had you previously made payments
5	to Mr. Hoff	or Sherman Brothers?
6	Α	1967.
7	0	And approximately how much money had you paid
8	him?	
9	Α	It was \$1,000 a year, was the total amount.
10	Ö	What was the reason for making those payments
11	to Mr. Hoff	for Sherman Brothers?
12		MR. ESBITT: OBjection, if your Honor please.
13		THE COURT: I will allow it, but keep it within
14	some limits.	
15		(Ouestion read back by the reporter.)
16	Λ	The reason was he gave permission to tell
17	Sherman that	he could give out contracting to non-union
18	sources.	
19	Q	Where did you get the monies to pay Hoff with
20	regard to th	e Sherman Borthers firm?
21	Λ	Mr. Sherman would pay me in his office, in his
22	vault, \$500	in cash, twice a year.
23	Ω	You used part of that pay to Mr. Hoff?
24	. A	I used part of that to pay Mr. Hoff.
25	0	You mentioned one other firm?

1	1hv 3 Glasser-direct
2	Λ Chateau Furs.
3	O How much had you paid Mr. Hoff with regard
4	to Chateau Furs before this conversation with Mr. Hoff
5	concerning Mr. Schwartzbaum?
6	A I had paid him part of a \$2,000 a year collec-
7	tion.
8	Q Collected from who?
9	A From Chateau Furs, in 1967.
10	O Chateau gave you \$2,000, is that right?
11	A Not in one payment. Split \$500 four times
12	a year.
13	O And then you gave part of that to Mr. Hoff?
14	A Part of that went to Mr. Hoff.
15	What was the purpose of that payment to Mr. Hoff
16	for Chateau?
17	MR. ESBITT: Objection.
18	THE COURT: Same ruleing.
19	Mr. Glasser, to the best of your knowledge, Mr.
20	Schwartzbaum doesn't have anything to do with Mr. Sherman?
21	THE WITNESS: Nothing whatsoever.
22	THE COURT: To the bestof your knowledge, Mr.
23	SChwartzbaum doesn't have anything to do with Chateau Furs?
24	THE WITNESS: Nothing whatsoever.
25	(Pending guestion was read back by the reporter

- 11	
2	A For the firm being able to give out contracting
3	to union sources.
4	O Once again in this meeting with Mr. H off, how
5	did the meeting conclude, the last meeting with Mr. Hoff
6	concerning Mr. Schwartzbaum which you were describing?
7	A When I came back to Mr when I went to Mr.
8	Hoff the first time and he gave me the okay
9	MR. ESBITT: Your Honor, I will object to the
10	conclusion and prefer that the witness tell us what the
11	conversation was.
12	THE COURT: All right. Sustained.
13	MR. FRYMAN: Let me rephrase the question.
14	O What was the last thing that Mr. Hoff said in
15	your first meeting with him concerning Mr. Schwartzbaum?
16	Λ "It's okay."
17	O What did you do after that?
18	A A day or so later I went up to Mr. Schwartzbaum
19	and I said to him, "Jack, I have the okay from Charlie Hoff".
20	O Where did you meet?
21	A In Mr. Schwartzbaum's private office at 224
22	West 30th Street, in his loft.
23	Ω Did he shut the door again?
24	A In his private office, but the door was shut.

You said to him "Hoff says okay"?

1	1hv 5 Glasser-direct
2	A I said to him "Mr. Hoff said it would be okay."
3	Q What did Mr. Schwartzbaum do then?
4	A We then discussed the question of how much he
5	was willing to pay for that privilege.
6	O "He" being Mr. Schwartzbaum?
7	A "HE" being Mr. Schwartzbaum.
8	O What did he say?
9	A He came up with a figure of \$300, three times
10	a year.
11	MR. ESBITT: May I ask that the answer be
12	stricken out and the witness again instructed to tell us
13	what the conversation was rather than his conclusion of
14	what happened?
15	THE COURT: All right.
16	0 What did Mr. Schwartzbaum say to you to the
17	best of your recollection in that second meeting in this
18	private office?
19	A To the best of my recollection, he says "I
20	will pay \$900 a year."
21	o pid he say how many payments there would be?
22	A Yes, he did.
23	O And how many payments?
24	Me said it will be paid three times a year.
25	0 What would be the amount of each payment?

1	lhv 6	Glasser-direct	68
2	, λ	\$300.	
3	Ω.	Approximately when did this meeting occur	
4	in 1968?		
5	Λ	Sometime in May of 1968.	
6	Ω	Did he give you any money in that meeting?	
7	Λ	Not the first meeting.	
8	Ú	We are talking about the second meeting now.	
9	Λ	The second meeting, he gave me \$300.	
10	Q	Was that in cash?	
11	Λ	That was in cash.	
12	ú	Where did he get the money?	
13	۸	He took it out of his pocket.	
14	Ò	And handed you \$300?	
15	Λ	He handed me three \$100 bills.	
16		THE COURT: Can we get the date on that	
17	again? Th	e date on this second meeting was when?	
18		THE WITNESS: Sometime in May of 1968.	
19		THE COURT: Is that the same time you're say:	ing
20	that \$300 w	as paid?	
21		THE WITNESS: That would be the second meeting	ng.
22		THE COURT: That's May of '68?	
23		THE WITNESS: In May of '68.	
24	0	What did you do, Mr. Glasser, after Mr.	
25	Schwartzbau	m gave you that \$306 in cash?	

1	1hv 7 Glasser-direct
2	A I met with Mr. Hoff a day or two later.
3	Q What did you do at that meeting with Mr. Hoff?
4	A I gave him I had changed one of the \$100
5	bills in the bank for two \$50 bills. I gave Mr. Hoff \$150
6	in cash and I said one word to him, and I said "Schwartzbaum,
7	and that was the end of the conversation.
8	Ω Did you receive any other payments from Mr.
9	Schwartzbaum in 1968?
10	A Yes. Sometime in September of October, it
11	could have been anyone of those two months, another payment
12	of \$300.
13	O What were the circumstances leading up to that
14	payment?
15	A He called
16	MR. FRYMAN: Withdraw the question and let me
17	rephrase it.
18	Q Where did Mr. Schwartzbaum pay you that money?
19	A In his private office at 224 West 30th Street,
20	in his loft.
21	O Did he call you up to his office?
22	A He would call me up whenever he was ready to make
23	the payment.

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on this occasion?

Q What did he say to you when youwent to his office

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A Just very few words. He just would take out the \$300, give it to me, and I would walk out.

O What did you do with that money?

A I would meet Mr. Hoff a day or two later, give him \$150 and say "Schwartzbaum," and I would walk away, and Mr. Hoff would put the money in his pocket and he would walk away.

- O Was there a third payment in 1968?
- A Yes, there was.
- O When did that occur?
- A That was around Christmas week, the last -- Christmas week of 1968.
- O Did Mr. Schwartzbaum again call you up to his office?
 - A Yes, he did.
 - O Did you again go into his private office?
 - A Yes, I did.
 - Q What did he say on this occasion?
- A Well, this time he gave me the \$300 in cash plus two bottles of liquor for myself.
 - Q What did you do with the \$300?
 - A Split it with Mr. Hoff.
 - O How soon after this meeting did you see Mr. Hoff?
 - A I saw Mr. Hoff at the most a day or two later.

1	1hv 9	Glasser-direct 71
2	Ú X	ou gave him \$150?
3	A F	eight.
4	0 1	Turning, Mr. Glasser, to 1969, did Mr.
5	Schwartzbaum	pay you any money in 1969?
6	N 2	des, he did.
7	0 1	Then was the first payment?
8	y 1	My best estimate of that would be sometime
9	around June	or July of '69. Possibly in June.
10	Ω	Did this payment occur in this private office?
11	V	In his private office.
12	0	Did he call you up to his office again?
13	7	He always called me up.
14	O	What did he say on this first occasion in 1969?
15	, V	Very little. He just gave me the \$300. I put
16		eket and walked out.
17	Q	Did he give you any indication as to what it is
18	for?	
19		MR. ESBITT: Objection to the form of the
20	question, i	f your Honor please.
21		MR. PRYMAN: Withdrawn.
22	0	Did he say anything further?
23	Λ.	Yes, he said he was continuing to job merchan-
24	dise and gi	ve out contracting.
25	5	What did you do with that payment of \$300 that

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Mr. Schwartzbaum gave you?

A I met with Mr. Hoff a day or two later, gave him half of it.

O Did you say anything to Mr. Hoff when you gave him the money?

A Yes, I did. I told him that the firm was continuing to do what they did last year.

O You identified the firm?

A I identified the firm as Schwartzbaum.

Q Did Mr. Schwartzbaum make any other payments to you in 1969?

A Yes, he did. Around sometime in September or October, another \$300 was paid.

> Was that again in his private office? 0

In his private office.

O And again he called you up to his office?

A He called me to come up to see him.

What did he say when you went into his office?

He just gave me the \$300. I put it in my pocket and walked out.

O What did you do with it?

A T met Hoff a day or two later, gave him \$150, said "Schwartzbaum" to him and walked away.

O This payment was approximately in what month?

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1	1hv 11	Glasser-direct 73
2	Λ	It could have been September or October.
3	Ō	Were there any other paymer's in 1969?
4	Λ	Yes, there was one payment Christmas week.
5	Q	Where did that payment occur?
6	Λ	In Mr. Schwartzbaum's office.
7	0.	Did he call you again up to his office?
8	Λ	He called me up.
9	0	What did he say to you on this occasion?
10	Λ	He gave me the \$300 plus two bottles of liquor,
11	and I walk	ed out.
12	Ö	What did you do with that money?
13	N A	I split it with Mr. Hoff.
14	0	You gave \$150 to Mr. Hoff?
15	Λ	That is correct.
16	0	How soon after that meeting
17	Λ	It would be a day or two later.
18	()	Turning to the year 1970, was there an occasion
19	in 1970 w	then you became ill?
20	Λ	Yes, there was.
21	Ú.	When was that?
22	A	It was sometime in the end of July, 1970.
23	0	Were you in the hospital?
24	A	Yes, I was.
25	Q	Do you recall any payments from Mr. Schwartzbaum

in 1970?

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A No, I don't recall. It could have been made, but I just don't recall it.

Ω How long were you in the hospital in July of

A For about two weeks.

O Did you go back to work as a labor adjustor for the Associated Fur Manufacturers?

A For about one day. I reported for one day.

O When was your employment with the Association terminated?

A September, I would say, the first week in September of 1970.

THR. ESBITT: May I suggest, your Honor, that this might be an appropriate time for a short break?

MR. FRYMAN: I just have a couple other questions before I turn to another subject, your Honor.

THE COURT: You finish, Mr. Fryman.

O But I believe you said that after you were in the hospital in July of 1970, you effectively only worked about one day?

A I didn't even work that one day. I reported one day and that was -- I was not working that day.

So your service as a labor adjustor for the

THE COURT: Proceed, Mr. Esbitt. Cross examine.

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MR. FRYMAN: I'm not finished yet, your Honor. I finished with one area and then I was going to continue.

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THE COURT: All right. Fine, go ahead.

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BY MR. FRYMAN:

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Mr. Glasser, you have testified about payments by Mr. Schwartzbaum to you and then your transmitting a portion of those monies to Mr. Hoff.

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A Yes.

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In connection with contracting and importing. Did you trasmit any other payments from Mr. Schwartzbaum to any other union official?

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Yes, I did. A

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Who was that union official? Q

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Mr. Harry Jaffe. A

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What was the occasion that led to Mr. Schwartz-

Well, there was an occasion where on a routine

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baum's payment to you with respect to Mr. Jaffe?

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visit to the shop between Mr. Jaffe and myself, Mr. Jaffe

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noticed some coats on a rack in the showroom that were not

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of the type and kind that the firm manufactures. He started to ask some questions, where did these come from , where did

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that come from. I said to Mr. Jaffe, "Let's go downstairs."

Q Approximately when did this occur?

A That must have been -- my best recollection of that event is sometime in October or November of 1969.

Q You and Mr. Jaffe left the shop together?

A We left the shop together.

Q Where did you go?

A Down into the lobby of the building at 224
West 30th Street.

Q What did you say to Mr. Jaffe when you got down there?

A I told Mr. Jaffe that I had -- that the firm had permisstion to job and buy merchandise, and that he should wait for me downstairs. I went back to the firm.

Q Back up to the Scwartzbaum firm?

A Back to the Schwartzbaum firm.

Q Did you see Mr. Schwartzbaum up there?

A Yes, I did.

Q What did you say to him?

A I said, "Jack, he is asking questions. I think you better give me \$100 and I will shut him up."

Q What did Mr. Schwartzbaum say?

A lle gave me the \$100. I went back downstairs,
I gave it to Mr. Jaffe, and that was the last time Mr. Jaffe

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ever questioned the firm as to where he was getting any-where any of the garments that were not manufactured on
the premises were coming from.

- Q What did you say when you gave him the money?
- A I said "This is from Mr. Schwartzbaum."
- Q Did you give Mr. Jaffe any money from Mr. Schwartzbaum on any other occasion?
 - A Possibly on one other occasion.
- Q You were the labor adjustor for the Schwartz-baum firm for all of the year 1968, all of the year 1969 and up through July of 1970, is that correct?
 - A That is correct.
- Q During that period was there any fine or any penalty of any sort assessed against the Schwartzbaum firm for the practice of contracting?
 - A None that I can ever recall.
- Q During that period with regard to the practice of importing, was there any union action against the firm?
 - A Yes, there was. On one occasion.
- Q Was that union action directed solely against the Schwartzbaum firm?
 - A No, it was not.
 - Q Were there a number of firms?
 - A There was quite a few firms that had a

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did the union do?

could get jobs.

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Yes, they did.

How much was that?

They paid approximately \$400 in back wages to the workers that were called down on strike.

> You say back wages. What do you mean? Q

Loss of time, for loss of time while they were

out on strike.

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O For the day that the workers were out?

A The day that they were out on strike, if it was a day.

You recall that amount was about \$400?

A About \$400.

Q Did the Schwartzbaum firm have to pay any fine for the practice of importing during the years 1968, 1969 and the first half of 1970?

A No, they didn't.

Q Mr. Glasser, you mentioned that in addition to the payments from Mr. Schwartzbaum which you passed on to Mr. Hoff you had also transmitted payments to Mr. Hoff from I believe two other firms, Sherman Brothers and Chateau.

Have you ever accepted payments from any other fur manufacturer which you transmitted to any official of the Furriers Union?

A Yes, I did.

Q What firms were those?

A There was a firm called Corrina Furs, there was Breslin, Baker, there is one other one now and I just can't remember his name. I just can't recall. There was another one. There were five firms all together.

O Do you know a firm called Daniel Furs?

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- That's the firm. Daniel Furs.. A
- Approximately what were the total payments to Q you from Corrina Furs?

Corrina Furs paid \$50 a month for about eight months during the year.

Did you pass part of those payments on to union officials?

- To a particular union official, yes. A
- Who was that? Q
- Mr. Al Gold. A
- Approximately what were the total payments Q from the Baker firm?
 - \$1,000 a year. A
 - Did you pass part of that on to a union official? Q
 - Yes, I did. A
 - What official was that? Q
 - Mr. Hoff. A
 - Approximately what was the total amount of Q the payments from Daniel Furs?
 - It was one payment of \$1,000.
 - Did you pass part of that on ot a untion official?
 - Yes, I did. A
- Who was that official? ()

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Mr. Al Gold. A

THE COURT: To the best of your knowledge, Mr. Schwartzbaum had nothing to do with any of those payments, is that correct?

THE WITNESS: He had nothing to do with any one of those payments.

Is it correct, Mr. Glasser, that you yourself retained a part of all these payments that you described from fur manufacturers?

Yes, it is.

Did you report these payments on your income Q tax?

No, I did not.

MR. FRYMAN: No further questions, your

Honor.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. ESBITT:

Q Mr. Glasser, you testified under oath on two prior occasions before today?

> I believe so. A

Once two months ago before Judge Pierce? Q

Yes. Λ

And the other time in April of 1972 before a Q

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federal grand jury?

I believe that's so.

On the first occasion you were sworn by the Q foreman of the grand jury and sworn to tell the truth, the whole truth and nothing but the truth, so help you God?

That is correct.

Was your testimony before that grand jury the truth, the whole truth and nothing but the truth?

Yes, it was. To the best of my recollection, yes.

When you testified before Judge Pierce and a jury in this building about two months ago, you were sworn by the court clerk, were you not?

Yes, I was.

To tell the truth, the whole truth and nothing but the truth, so holp you God?

Yes, I did.

Was your testimony truthful? Q

Yes, sir, it was. A

And you have testified today after being 0 sworn?

> That is correct. Λ

Is your testimony today truthful? 0

Yes, it is. A

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Mr. Glasser, in April of 1972, you were granted Q immunity, were you not?

That is correct, sir.

And before you were granted immunity, you had a conversation with Mr. Hinkley, a special prosecutor for the Department of Justice?

> Yes, sir. A

The conversation had to do with immunity?

A Yes, it did.

At that time when you were requesting immunity from Mr. Hinkley, how many crimes had you committed?

> That I committed? A

You. How many? Q

At least five. A

Could it have been ten? Q

No. Five. Λ

Five crimes? Q

A

Isn't it a fact, Mr. Glasser, that you 0 committed more than forty crimes?

> No, it is not a fact. A

You know --Q

MR. ESBITT: I ask your Honor to take judicial notice of the fact that every individual payment is a

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separate crime under the Taft Hartley Law. If you wish authority, I have it. It is cited in the government's brief, U.S. against Jack Cohen.

on it. You may inquire into the area as you are doing, but there is no need for me to take judicial notice of the end result of all of this. You go ahead and inquire.

Q Are you under the impression, Mr. Glasser, that each manufacturer that you dealt with from whom you took money constitutes one crime, even though there was more than one payment?

A Yes, I am under that impression.

Q You are under that impression?

A Yes, sir.

Q Had you discussed that with Mr. Sabetta or Mr. Frymand before your testimony?

A No, I have not.

Q You testified, did you not, that you received money from a fur manufacturer, one of your members, by the name of Sherman Brothers?

A That is correct, sir.

Q And is it not a fact that you received six \$500 payments on separate occasions?

A No, it is not, sir.

1	lhv	Glasser-cross 85
2	Q	It is not?
3	Λ	No.
4	Q	Is it not a fact that you received \$500 from
5	Sherman	Brothers in July of 1957?
6	A	That is correct, sir.
7	Q	That is correct?
8	A	Yes, it is.
9	Q	Is it not a fact that you received from the
10	Sherman	Brothers \$500 in December, 1907?
11	A	That would be correct.
12	Q	Is it not a fact that you received \$500 from
13	Sherman	Brothers in July of 1958?
14	A	That's correct, sir.
15	Q	And \$500 in December of 1958?
16	A	That is correct.
17	Q	And \$500 in July of 1969?
18	A	That is correct.
19	Q	And \$500 in December of 1959?
20	A	That is correct.
21	Q	And those are six separate individual payments?
22	А	I have testified I received \$1,000 a year.
23	Q	I am asking you about the individual payments.
24	Λ	It was six times during that period of time.
25	Q	During that period you received six individual

1	1hv Glasser-cross 87
2	payments from Sherman Brothers?
3	A That is correct.
4	Q You testified that you received money from Harry
5	Hessel?
6	A Yes, I did.
7	Q Is it not a fact that you received eleven
8	separate payments from Harry Hessel on eleven different
9	occasions?
10	A Well, if you will enumerate them I will tell
11	you whether it is a fact or not.
12	Q In July of 1967 you received \$500 from Harry
13	Nessel?
1.4	A I think I got one before that. I think I got
15	one in April of 1957.
16	Q You received a payment in April of 1967?
17	A I believe so.
18	Q And did you receive a payment in July of 1967?
19	A Yes, I did.
20	Q And did you receive a payment in October of 1967
21	A Yes, sir.
22	Q And did you receive a payment in December of
23	1.967?
21	A Yes, sir.
CVP	

1	1hv	Glasser-cross 88
2	Q	Did you receive a payment of \$500 in April of
3	1968?	
4	A	Yes, I did.
5	Q	And \$500 in July of 1968?
6	Λ	Yes, sir.
7	Q	And \$500 in October of 1968?
8	A	Yes, sir.
9	Q	And \$500 in December of 1968?
10	A	Yes, sir.
11	Q	And \$500 in April of 1969?
12	A	Yes, sir.
13	Q	And \$500 in July of 1969?
14	Λ	Yes, sir.
15	Q	And \$500 in October of 1969?
16	A	Yes, sir.
17	Q	And \$500 in December of 1969?
18	A	Yes, sir.
19	Q	All adding up to eleven individual payments
20	from Harry	Messel constituting eleven separate crimes.
21 22	Λ	I had testified I had received \$2,000 a year
23	from Harry	Hessel.
124	Q	And the payments were in accordance with the

And I so testified to that.

list that I have just read to you and to which --

1	1hv	Glasser-cross 89
2	Q	You so testified?
3	A	Yes, I did.
4	Q	You received separate individual payments
5	from Brosli	In Baker?
6	A	Breslin Baker?
7	Q	Yes.
8	A	I believe it was two payments a year.
9	Q	For two years?
10	A	For two years.
11	Q	Is it not a fact that you received \$500 from
12	Mr. Baker	in July of 1968?
13	Λ	Yes, it is.
14	Q	And \$500 from Mr. Baker in December of 1968?
15	A	Yes, sir.
16	Q	And \$500 in July of 1969?
17	A	Yes, sir.
18	Q	And \$500 in December of 1969?
19	A	Yes, sir.
20	Q	So you receive four separate payments from Mr
21	Baker cons	stituting four separate crimes, is that not a
22	fact?	

A And I so testified that I received \$1,000 a year in '68 and '69, payable twice a year.

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Q Four separate payments in 1969 and 1968 from Mr. Baker constituting four separate crimes.

A I so testified.

Q What about the crimes you committed in connection with payments received from Sol Cohen? How many crimes were involved in that case, crimes committed by you, Mr. Glasser?

MR. FRYMAN: Objection to the form of this, your Honor. Mr. Esbitt keeps using the words crimes which calls for a legal conclusion by the witness. If he wants to ask about the specific payments, fine.

THE COURT: It does call for a legal conclusion, Counselor, but you are free to ask about the specific accounts.

Q What about the number of separate individual payments that you received from Sol Cohen, how many were there?

A There was about eight \$50 payments eight times at different times of the year.

Q Any \$100 payments?

A \$50 payments.

Q Were there any \$100 payments?

A Not that I can recall.

MR. ESBITT: Let me have the record, page 195.

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Q I ask you, Mr. Glasser, whether you were asked the following questions on the prior trial two months ago, not the prior trial of this, but a prior trial two months ago, were you asked the following questions and did you give the following answers --

MR. FRYMAN: Page?

MR. ESBITT: Page 195, line 2.

Q A question asked by Mr. Sabetta:

"Q Now, you say that in 1968 you did receive monies from Mr. Cohen?

"A Yes, I did.

"Q Tell us on what occasions and how much?

"A Well, only when he was busy was he willing to do that, which as a retailer his season didn't start until about either July or August of the year of 1968, and that is when the payments began and that is when he started to work under time and overtime.

"Q You received, you said \$100 for the first two months?

"A I believe so."

Were you asked those questions and did you give those answers?

A Yes.

Q Does that refresh your recollection?

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Yes. A

Were these answers truthful? Q

A Yes, it is.

Do you wish to change your testimony now? Q

Yes, I do. A

So that it is a fact, is it not, that with respect to payments you received from Sol Cohen you received a payment of \$100 in July of 1968, \$100 in August of 1968 and ten additional payments of \$50 a month apart, is that not a fact?

I received approximately \$300 a year for the years '68 and '69.

Well, is it not a fact that you received \$400 in 1968?

No, it is not.

You have just admitted that you testified that you received \$100 in July of 1968 and \$100 in August of 1968.

1s that true?

A That is true.

Did you receive \$50 in September of 1968? 0

Not every month the reafter. There were months A that he had nothing -- no work at all in the factory.

In 1968, in September or October, November and

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December, did he not pay you \$50 every month?

A It could have been, but I cannot remember specifically those, you know, those payments on those days.

Q So that is it not a fact based upon the questions I have asked you and the answers which you have given -- one more question -- Mr. Ginsberg gave you \$1,000 in May of 1969?

A I believe so.

Q So that on the basis of the questions I have asked you and the answers you have given us, is it not a fact that you have testified that you have received from your -from some of your fur manufacturers forty individual payments, is that not a fact?

If that's what it adds up to, that's what it is.

You have testified in direct examination that you kept part of this money?

That is correct.

You kept it in your pocket? ()

That's right.

You did not report it on your income tax return?

No. I did not.

That you know is a crime that you committed in 1907, 1968, and 1969?

Yes, but were you told that giving a false statement to Mr. Hinkley, even though not under oath,

constituted a crime?

18 U.S. Code 1001?

I was down voluntarily.

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No, I was not told that at all.

Mr. Glasser, you were the labor adjustor for how

I was not under oath and I was not subpoenaed.

SOUTHERN DISTRICT COURT NEPPETERS, U.S. COURTHOUS

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many of your members during the period '68, '69 and the part of '70 where you ---

A I would estimate about 115 shops.

Q 115?

A About.

Q As a labor adjustor, you represented these people, didyou not?

A If they were in my district, yes.

Q I am talking about the ones, the 115 or somewhers of your Association who were assigned to you.

A Yes, I was the representative.

Q You represented them, is that not true?

A Yes.

Q And you represented them with respect to any matter pertaining to this collective bargaining agreement?

A That is correct.

Q And if the union brought a case before the Impartial Chairman, you represented the manufacturer, did you not?

That is correct.

Q And when the union pressed a complaint against a furrier that was a member of your Association, was it your function to minimize that complaint and try to keep the fine

of business?

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That is correct. A

What was the conversation, please?

MR. FRYMAN: Objection, your Honor. He has already gone into the question of payments and this can go on ad infinitum. This is collateral to the issues involved in this proceeding.

THE COURT: I think the conversations are.

MR. ESBITT: Sir?

THE COURT: I say, I think the conversations

MR. ESBITT: Are what, your Honor?

THE COURT: Objection sustained.

MR. ESBITT: May I be heard, your Honor?

THE COURT: If you wish to inquire around those payments, you may, but I don't wish you to go into the conversations.

MR. ESBITT: I'm sorry, your Honor, but I ask for permission to argue them out.

THE COURT: All right.

(In the robing room.)

MR. ESBITT: If your Honor please, counsel for the government has opened the door.

THE COURT: He didn't ask any questions about conversations about Sherman or Corrina or Baker that I

recall. He asked about circumstances, and I will permit you to do the same thing.

MR. ESBITT: I'd like to explain what the purpose of my examination is. I think it is vital to my case.

THE COURT: All right.

MR. ESBITT: In the first place, he opened the door.

THE COURT: Yes, but the question is, to what.

MR. ESBITT: He has opened the door to the fact that these people have paid him money and that he claims he gave the money, part of the money, to the union. I intend to show by cross examination, I have the reported documented, that this man, Glasser, was the instigator of all of these cases, he was the instigator, he was the promoter, he was the man that made the deal, not the union, that's the testimony, not the union, but he, and in view of those facts I submit that I have a right to prove those facts, and I will prove it through the testimony of this witness as to what his conversations were.

For example, your Honor, the testimony will show that these manufacturers never mentioned money to him, he was the one that negotiated money, he was the one that made the deal and he was the one as a result of these

conversations, the proof will show, that he was the one that made the deal, not the union, but Glasser. That the proof will show.

Unless I am permitted to cross examine this witness with regard to all of the deals that he made in addition to Schwartzbaum, I think your Honor is unduly restricting my opportunity to cross examine this witness.

THE COURT: I personally think that you might bring it out in another fashion, but, let me hear from Mr. Fryman on the point first.

MR. FRYMAN: Your Honor, it seems to us that the only relevance at all to this line of questioning is to point out that Glasser may have committed certain acts which constituted crimes for which he was not prosecuted, and that would give him a motive to lie in this case.

My questioning was directed -- was limited to the payments that the manufacturers gave to him and he relayed to the union officials, which would be the circumstances that would give rise to criminal liability.

We made no objection to Mr. Esbitt going into this same area. But when he goes beyond that and sort of seeks to relitigate the whole matter of the circumstances, the conversations, the rooms, the people involved, in all of the other cases, it is totally collateral to the issues

in this indictment.

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This indictment deals with some specific payments from Schwartzbaum to Glasser to Hoff.

MR. ESBITT: I have a memorandum of law on this subject, Judge, and I am entitled to the widest scope in this type of cross examination, the widest scope.

THE COURT: Yes, but the point is, I don't see why you cannot do it, that is that which you propose to do, without going into the conversations, which poses all kinds of other problems.

You can point out, if you wish, that Glasser went to Sherman rather than Sherman coming to Glasser, if that is what happened, and right down the line. You can ask him, did the question of money come up or originate with you in any conversation you had --

MR. ESBITT: Judge, forgive me. I appreciate wnat you're saying, but you will have to forgive me, I think it is unfair to limit my scope of cross examination. I have to cross examine this witness as I think my defense should be.

THE COURT: Let me tell you what I am trying to do. You may see it as trying to limit you. I see it as trying to allow you to do what you are trying to do in a fashion that we can all live with.

One fellow walks in a room and see 100 chairs and 50 people and says it is half empty. The other person walks in and sees 50 people in 50 seats and 50 empty seats and says the room is half full. Do you want to be neard on the conversations business?

MR. ESBIT: May I get you this memorandum?

Perhaps that would be helpful not only on this but the entire scope of cross examination, because this is a special case and the Court of Appeals has said on two occasions, and I will give you the citations and portions of it for you to read, I am entitled to the widest scope that the rules of detense permit in this type of case.

THE COURT: I can show you cases where I have been the tryer, where I have been the trial Judge, where the Court of Appeals commented on how far I allowed counsel to go.

MR. ESBITT: I have the case that will agree that you are entitled to do that.

THE COURT: You get anything you have.

(Pause.)

MR. ESBITT: I would point out to your Honor --

MR. SABETTA: I read that memorandum, it says nothing other than the general principle of law which is one we agree with Mr. Esbitt about.

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MR. ESBITT: Did you read the case too?

MR. SABETTA: No, I haven't read the case, but you haven't cited any facts from the case. I am not familiar with the case off the top of my head.

MR. ESBITT: Would you like to read the case?

MR. SABETTA: I will be happy to.

MR. SABETTA: There is nothing in this case which would cause me to alter my judgment in what I just said. The only question that I have and Mr. Fryman has is whether or not you are entitled to go into all of the facts and circumstances of the admitted crimes, and that case doesn't say anything about that proposition, which I have always understood, first of all, to be within the Judge's discretion, and, secondly, to be limited to the extent that it is collateral.

(Pause.)

Once you have the admission that a crime has been committed, that is basically the end of it.

MR. ESBITT: I am going passed the question of crimes. That memorandum was prepared for that purpose, but these cases go much further than that. By the way, he hasn't admitted a crime, you know, just admitted the payments, unless you're willing to concede --

MR. SABETTA: Absolutely.

MR. ESBITT: That these are crimes by him?

MR. SABETTA: They are certainly crimes, there is no question about that. I think if you ask him did you know that this was wrong, you will get the same response, that he knew it was wrong. I think that you will see you need to ask him.

THE COURT: Even against the law.

MR. SABETTA: To ask him whether it is a crime, that is a legal conclusion.

THE COURT: That's a little more difficult for the Judge to tolerate. But if you want to ask him did he know whether it was unlawful, in violation of law, that would very likely be acceptable.

MR. ESBITT: Judge, if your Honor wants to read the case, I will wait a minute or two.

(Pause.)

THE COURT: In the first place, this case, this is Padgent, says that widest possible latitude should be allowed on the question of cross examination with respect to motive. I don't have any quarrel with that at all. By the same token, there is reference here that where an accomplice's testimony implicates a defendant, his testimony is inherently suspect.

Your point is to try to bring out, as far as I

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can see, that this man himself has been involved in criminal acts, multiple criminal acts.

MR. ESBITT: More than that. That I have already brought out.

THE COURT: That is before the jury. If Mr. Fryman didn't bring it out, you brought out -- he brought out at least three or four or five, and you have brought out perhaps as many as forty. That's before the jury.

MR. ESBITT: That's right. I am going farbeyond that?

THE COURT: What is it you wish to do? Tell me where you're going.

MR. ESBITT: Oh, sure. The purpose of this line of cross examination is to establish that Glasser was the principal in these situations and not the union and not the manufacturer, and I have the proof to support it in cross examination, and to develop that proof I must ask him questions because I have it backed by testimony.

THE COURT: Suppose you do establish that. What have you done?

MR. ESBITT: I have attacked his credibility, your Honor. Here is a man who is acting the part of "Well, I'm just a mere mediator. I collect some money from here because they want it done and I go over here and give it."

Oh, no.

THE COURT: No. The record is in effect he has said "I have engaged in forty unlawful acts myself."

Your man here is only charged with four.

MR. ESBITT: That is not the point, your

Honor. I was passed that stage. I proved that. I

proved that he is engaged in forty-four separate -- now

I want to prove that he was the instigator in every single

case and he made the decision as to whether these manufac
turers had a deal or didn't, and I will prove it.

THE COURT: Suppose you do, this isn't an entrapment defense, I gather.

MR. ESBITT: I don't know yet. It depends upon how the testimony develops, whether it becomes entrapment or not, I'm not sure --

MR. SABETTA: Glasser was never a government agent, Mr. Esbitt, during the times these crimes were committed. There is no such basis for the entrapment defense to even be considered.

MR. ESBITT: I don't know how this is going to develop. I say this, that I have the right to establish that this man is the instigator of each case and that he made the deal, not the union, and not the manufacturer. He made the deal, and I will prove it. I have the proof and

it is documented. I think I have the right to prove that, your Honor.

THE COURT: I ask you once again, if you are allowed to do that and you succeed, what have you done?

Does that mean the jury--

MR. ESBITT: Can disbelieve this man's testimony, absolutely.

THE COURT: Why do they have to disbelieve his testimony if they know now by his own statements that he is a person who as committed forty unlawful acts?

MR. ESBITT: That isn't enough for me.

THE COURT: If you show him to be the instigator, what have you shown that's going to exculpate, if you will, if the jury believes it, if the governments makes its case, how is that going to exculpate the defendant?

MR. ESBITT: They have a right to believe
that if he was the principal, he never gave any money to
the u; nion, and if he didn't give any money to the union,
there is no case, and I have a right to prove that and to show
it and I will show it, that he made the deal and he told
them --

THE COURT: All right, go ahead.

(In open court.)

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THE COURT: Proceed.

BY MR. ESBITT:

O Mr. Glasser, with respect to these invidual payments that we just talked about a few minutes ago that you received, the forty or so individual payments that you received from the manufacturers, you knew, did you not, each time you took one of those payments, you knew that you were doing something wrong, did you not?

A Yes, I did.

Q You had this conversation with Mr. Sherman, did you not?

A I had a conversation with Mr. Sherman.

O What was the conversation?

A Mr. Sherman called me, asked me to come up to his office and told me whether I could get him any -- get him some freedom to give out contracting. I told him I'd let him know.

Q That was in July of 1967?

A Approximately.

O Shortly thereafter you went to see Mr. Hoff?

A That is correct.

0 What did he say?

A He said it would be okay.

Q He said go ahead?

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O At that point when you said "What are you willing to pay," you knew it was a crime for Mr. Sherman to make any payemnt?

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A That I knew it was a crine? I didn't know

1	lhv	Glasser-cross	109		
2	nothing of the kind.				
3	Ü	You didn't know it?			
4	Λ	No.			
5	Ω	When you were collecting all this money	from		
6	the manufac	turers and, as you say, gave part of it	to the		
7	union offic	ials, you didn't know that was a crime?			
8	Λ	For Mr. Sherman to give me the money?			
9	Ω	For Mr. Sherman to give you the money w	as not		
10	a crime, wa	s it?	4		
11	Λ	I don't know.			
12	Ü	Did you think it was a crime for you to	give		
13	money to th	e union official?			
14	V	A crime? I had no thought on the matte	r.		
15	Ü	No thought at all?	•		
16	Α.	None whatsoever.			
17	Ö	You certainly didn't have a conscious t	:hought		
18	that taking	money from a manufacturer was a crime?			
19	Λ	No, I didn't at that time, no.			
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- ? When did you find out that it was a crime?
- A When I found out it was a crime? After July 1970, when Mr. Sherman turned me in.
 - o Mr. Sherman turned you in?
- A Yes.
 - O Getting back to the Sherman Brothers situation,
 Sherman Brothers called you up, asked you to come in, said
 they had wanted to give some work to non-union shops. You
 said, "I will let you know." You spoke to Mr. Hoff. He
 said, "Go ahead." And then you went back to Sherman
 Brothers, right?
 - A Right.
 - O Then you negotiated a price; you said, "How much do you want to pay?"
 - A Right.
 - O What did he say?
 - A "\$1,000 a year."
 - Q Did you have any negotiation about the price?
- 20 A None whatsoever.
 - O You didn't tell him how much he should pay?
 - A No.
 - O And he made an offer of a thousand dollars?
- 24 \ A And that's right.
 - O What did you say?

- Glasser-cross 1 LHig 2 I went back to Mr. Hoff and told it to him. 2 You went back to Mr. Hoff and told him what? 3 A That the firm was willing to pay a thousand 4 dollars for the privilege -- a year for the privilege of 5 giving out contracting. 6 And? 7 He said it will be okav. He said the thousand dollars is okay? 9 That is correct. 10 Λ What you are telling us now is that Mr. Hoff --11 you had two conversations with Mr. Hoff, the first time 12 for approval and the second time for approval of the money? 13 That is correct. 14 That you say is the truth? That is my best recollection of those events. 16 I will ask you whether or not the following 17 questions were asked of you at the prior trial and whether 18 you gave the following answers, page 115, starting at line 19 20 10: "O Was there any further conversation? 21
 - "O Was there any further conversation?
 And, if so, what was said?

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"A I then went back to the firm of Sherman
Brothers and the rest of mv conversation on that
subject was with Mr. Sam Sherman. Mr. Ben Sherman

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was ill. He had some sort of an incurable disease and he was not always available. He used to come in for an hour or two and then go home. We discussed the matter and he told me what he was willing to pay."

Is that the truth?

- A That's correct.
- (Reading)
 - "O How much was that?
 - "A A thousand dollars a year."

The truth?

- A That's correct.
- O (Reading)
- "O This was for the privilege of giving out contracting?
- "A For the privilege of giving out contracting.
 - "O What did you say?
- "A I said, 'It's okay. Go ahead and do it."

Were you asked those questions and did you give those answers?

- A Absolutely, sir.
- O You said to him, "It's okay" after your first

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meeting with Mr. Hoff?

- A After Mr. Hoff gave me the okay.
- O Yes. But before he knew how much Mr. Sherman was going to pay?

That was left up to me to come back and tell him Λ what the firm was willing to pay.

O You testified, did you not, in the prior trial that you gave the okay to Mr. Sherman before Mr. Hoff had approved the price.

A Mr. Hoff never approved the price. He took what I could get.

O Didn't you just testify a few minutes ago, Mr. Glasser, that after Mr. Sherman told you what he was willing to pay, \$1,000, you went back to Mr. Hoff and said, "He is willing to pay a thousand dollars."?

- That is correct.
- O And Mr. Hoff said to you "It's okay."?
- That's correct. Α
- That's not what you testified at the prior trial, was it?
- A I was giving you my best recollection of events that are long past in years.
- O Which is your better recollection, your testimony today or your testimony two months ago?

A To me it's the same testimony. I can't see

any inconsistency in that testimony.

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O Is it not a fact that you said to Mr. Sherman as you testified two months ago, you said to Mr. Sherman, "It's okay. Go ahead and do it." before you had received approval of the amount from Mr. Hoff?

A All I got from Mr. Hoff the first time was the approval to do it.

o Yes.

A And then we had discussed the amount.

? You discussed the amount with Mr. Sherman?

A With Mr. Sherman.

Q And when he told you he was willing to pay a thousand dollars, you said, "Okay. Go ahead and do it."?

A That's correct.

O Before you had gotten approval of the amount from Mr. Hoff?

A I went down to Mr. Hoff and told him what I could get.

O Just when?

A day or so later.

O A day or two after you had said to Mr. Sherman, "Okay. Go ahead and do it."?

A That's correct.

O Is that true?

A That's so.

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O Now let's talk about Mr. Harry Hessel. Although he was a member of your association, he was not making furs, was he?

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vou know. "

Wasn't that the conversation?

"A I said, 'I don't know. I will let

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That's correct. A

- And not the conversation you told us about.
- Not at all. It was also the question of nonunion help.
 - You didn't testify to that at the prior --
 - I certainly did. A
- At the prior trial? You are certain that you Q did?
 - I am positive I did.
- After you spoke to Mr. Hessel, what did you do? By the way, in that first meeting with Mr. Hessel, was there any discussion about money?
 - A No, there was not.
- O Mr. Hessel said nothing about "Get me permission and I will pay the union."?
 - A Not at that time, no, sir.
 - You went to see Mr. Gold shortly after that?
- Originally. The original conversation was with Mr. Gold.
- O What did you tell him? What did you say to Mr. Gold?
- Mr. Gold had been stopping Hessel's boy in the street during the pickups from the contractor, and I told Mr. Gold that the firm would be willing to pay for the

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1	LHjg 5 Glasser-cross
2	privilege of not being harassed by the union.
3	O You told him that the firm would be willing to
4	nav?
5	A Right.
6	O Mr. Hessel didn't say anything to you about being
7	willing to pay, did he?
8	A Oh, that's what he called me up for.
9	O Did he tell you that?
10	A Specific amounts, no.
11	O Any amount. Did he say to you that "I am willing
12	to may for this privilege."?
13	A He told me he would be willing to pay for the
14	privilege without naming a specific amount.
15	O le did say that to you?
16	A Oh, yes.
17	Q And you testified to that at the prior trial?
18	Λ I believe so.
19	MR. ESBITT: Would you mark these two pages
20	for identification, please?
21	(Defendant's Exhibit F was marked for
22	identification.)
23	O I show you Defendant's Exhibit F for identifica-
24	tion, pages 143 and 144, transcript of a portion of your
25	testimony in a prior trial. I ask you to look it over and

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1	LHjg 6 Glasser-cross
2	see if there is anything in that which supports your state-
3	ment that when you spoke to Mr. Hessel the first time he
4	said, "I am willing to pay."
5	(Pause)
6	A This is just a part. In this part there was
7	no mention of money.
8	Q And that part covers the complete first meeting
9	that you had with Mr. Hessel?
10	A No, it does not.
11	Q It does not?
12	A No, it does not.
13	MR. ESBITT: Will the Government please produce
14	the additional pages beyond 143 and 144, Mr. Glasser's
15	prior testimony?
16	MR. FRYMAN: This transcript of the earlier
17	trial is a public record and I assume Mr. Esbitt has the
18	full transcript. Do you not, Mr. Esbitt?
19	MR. ESBITT: Do you have it, too, Mr. Fryman?
20	MR. FRYMAN: We do.
21	MR. ESBITT: You don't want to produ e it?
22	MR. FRYMAN: Do you?
23	MR. ESBITT: Yes, I do. But you have the
24	Court record I will withdraw that.
25	THE COURT: We will rd essing shortly and you

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that first meeting.

MR. FRYMAN: I object to the form of the ques-

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Q Since there had been no discussion of money between you and Mr. Hessel, you couldn't have had a discussion -- you didn't have a discussion with Mr. Gold or Mr. Hoff about money?

- A The first time? No question of money came up.
- Q When you went back to see Mr. Hessel, what was your conversation with Mr. Hessel?

A Well, we discussed first the amount of work that would be given out and he indicated that it would be a sizea ble amount, and the question of this non-union business came up, and then we talked about price --

- Q Is that the discussion with Mr. --
- A Hessel.
- Q -- Hessel after you had seen Mr. Gold?
- A And Mr. Atlas and Mr. Hoff.
- Q Did you have a conversation with Mr. Gold?
- A With Mr. Gold, Mr. Atlas and Mr. Hoff.
- Q As a group?
- A No. Separately.
- Q You didn't tell one that you had a conversation with the other?
 - A No.
- Q You didn't tell the second one that you had a conversation with the third?

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A No.

Q What was your conversation with Mr. Gold at that time?

- A With Mr. Gold?
- Q Yes.

A I told him that for a consideration that the firm was willing to pay for the privilege of giving out work without being harassed by the union.

- Q Is that what you said to Mr. Gold?
- A Words to that effect, yes.
- O Isn't it a fact that you said to Mr. Gold, "Since he is not making furs, let him alone and I will take care of you."?
 - A That I will take care of him?
 - Q Yes.
- A There is nothing that I could do to take care of him.
- Q No, no. I asked you what you said to Mr. Gold. Did you not say to Mr. Gold under oath, "I will take care of you."?
- A I don't recall using the word "I," because I had no power to take care of anybody.
- Q I ask you whether or not the following question was asked of you and the answer given by you under oath,

of you."?

"I told him, " meaning Mr. Gold, "for a considtoo, because he had raided that finishing contractor a few furs, let him alone and I will take care of you, " referring Was that question asked of you and cid you give Of course it's the truth. But the "I" means that I am representing the firm. I don't take care of Q Did you testify that you said "I will take care SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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- A If the word "I" is there, it means that I as a representative of the firm --
- Q You had had no discussion about price with Mr. Hessel after you had seen Mr. Gold and Mr. Hoff and Mr. Atlas, true?
 - A Not the first meeting, no discussion of price.
- Q And after you had spoken to each of these three individually, you then went back and spoke to Mr. Hessel?
 - A That is correct.
 - Q And you discussed price?
 - A We discussed the whole matter, including price.
 - Q What was the discussion about price?
- A He came up with a figure that he was willing to pay.
 - Q Did you tell him it was okay?
- A When he came up with that figure, I told him it was okay.
 - Q You did?
 - A I certainly did.
 - Q Who gave you the authority to fix the price?
- A That was done in every case. It was whatever they wanted to pay. There never was no barg aning, no haggling, no saying that's not enough. That's what they are willing to pay? that's what it was.

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Yes.

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Is that in your prior testimony?

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A I don't know if it is.

Q Would you like to look at the record again and see if it refreshes your recollection as to whether you told Mr. Hessel the names of the union officials?

A I may not have mentioned their names, but I told him that the union will be taken care of.

Q Isn't it a fact that you never mentioned the name to Mr. Hessel?

A I have no such recollection. This is all done from memory of events that took place years ago.

Q And your recollection today is hazy?

A My recollection was the best I could come up with, you know, getting these things together.

Q You had a lot of notes before you testified at the last trial?

A I had no notes.

Q When you testified at the last trial, you had notes?

A Notes? Yes.

Q Did you put in those notes anywhere that you told Mr. Hessel the names of the union officials?

A I have no recollection now of what is in the notes, even.

Q Mr. Glasser, you didn't want Gold to know that

LHjg 15

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you were giving money, if your testimony is to be believed, giving money to Mr. Hoff, you didn't want Mr. Hoff to know that you were giving some money to Mr. Atlas, and you didn't want Mr. Atlas to know that you were giving money to the other two union officials.

Isn't it a fact that you didn't want the manufacturer to know either?

- A There were no two other union officials.
- Q There was no what?
- A There were no two other officials.
- Q In that case, there were three, weren't there?
- A The three all together.
- Q That's right.
- A But you said two other.
- Q I am sorry. It is a fact that you didn't want one union official to know that you were paying off another union official?
 - A That is correct.
- O And you didn't want the manufacturer to know for the same reason.
- A I don't recall the exact details of whether the manufacturer knew or didn't know.
 - O You just don't recall those details?
 - A I don't recall those details.

1	LHjg 16 Glasser-cross 129				
2	Q Do you have anything that might refresh your				
3	recollection?				
4	A If I look at my notes, it possibly could.				
5	Q Would you do that between tonight and tomorrow and				
6	look at your notes?				
7	A Oh, sure.				
8	Ω Of course, again in this case, you never told the				
9	manufacturer, Mr. Hessel, how much you were keeping?				
10	A No, I never did that.				
11	Q So, as far as he knew, you kept it all.				
12	A I don't think he knew that at all.				
13	MR. FRYMAN; Objection, your Honor.				
14	THE COURT: Objection sustained.				
15	O Now let's talk about Mr. Baker. You had a meet-				
16	ing with Mr. Baker?				
17	A Yes.				
18	Q And at that first meeting he told you that he				
19	wanted to run a small shop?				
20	A A very small shop.				
21	Q What did you say?				
22	A I told him I would discuss it with Mr. Hoff and				
23	let him know.				

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Baker?

Q Did you mention the name of Mr. Hoff to Mr.

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A No. That was what I had in my mind.

Q I am not asking you what you had in your mind.

Did you mention to Mr. Baker the name that you were going
to see --

A No, I did not.

Of course you didn't. Did you have any discussion with Mr. Baker about money?

- A After I got the okay --
- O No. The first meeting.
- A The first meeting, no.
- Q You say you did speak to Mr. hoff after you left Mr. Baker?
 - A Yes.
 - Q What did you tell him?
 - A I told him that Baker would like to run a small shop and would like to be able to give out any excess work that he has.
 - Q Did you tell Mr. Hoff that Baker would be willing to pay?
 - A Not until I went back to Baker and spoke to him.
 - Q Did you tell it to him the second time?
 - A The second time.
 - Q Not at the first meeting?
 - A I didn't know it at the first meeting.

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Glasser-cross

- Ω At that first meeting that you had with Mr. Baker, money was never mentioned at all, right?
 - A The very first time, no.
- Q At your first meeting with Mr. Hoff with respect to Mr. Baker, were you asked this question and did you give this answer in the prior trial, record page 160, line 12:
 - "Q What did you say in substance to him?
 - "A I told him that Baker would like to run a very small shop and would like to start putting on people late in the season, in other words after July. In the interim he wants to give out some of his work, for which he would be willing to pay."

Were you asked that question and did you give that answer?

A Yes.

Q You told Mr. Hoff that Mr. Baker was willing to pay even before you had a conversation with Mr. Baker that he wald be willing to pay?

A That's what he called me up for and told me the very first time that he would be willing to pay for the privilege.

Q Is that what he told you and is that what he

now, whether you are talking about the first, second or

third or what.

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O I am talking about Mr. Baker.

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A Yes. But what occasion?

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Q Sir?

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A What occasion?

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Q The first occasion with Mr. --

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A This is the very first meeting with Mr. Baker?

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Q No; with Mr. Hoff.

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A With Mr. Hoff?

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Q Yes. You have already testified that in your first meeting with Mr. Baker he never mentioned anything about money.

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A That is correct.

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O Now you went to see Mr. Hoff, is that right?

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A To tell him what Mr. Baker is requesting.

17

Q And you just testified that -- you told Mr.

Hoff that Baker would be willing to pay.

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A That's correct.

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Q Is that right?

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A That's so.

22 23

Q I ask you whether this question was asked of you and you gave this answer, and I just read it to you. Do you want it read again?

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A Yes.

Q All right.

"O What did he say to you on that occasion"
- referring to your conversation with Mr. Hoff "and what did you say to him?

"A Mr. Baker called me on the telephone to come up" -- this is your first conversation with Baker -- "to see him. He told me that he would like to run a small shop only during the busy season. He didn't want to have any employees on his payroll during the first six months of the year when he was not busy since he was mainly a retailer and that he would like to employ a designer to make up his lines, samples, and to give out to contractors any work that he could not produce in his factory.

"Q What else did he say, if anything, and what did you say?

"A Well, I told him I would have to talk about it, I couldn't give him the permission, I would speak about it to somebody.

"Q Was there any reference made to money at that time?

"A Not at that particular moment, no."
True?

A That's what I testified to.

Mr. Baker

1	LHjg 22 Glasser-cross
2	Q In your first meeting with Mr. Hoff after you
3	had spoken to Mr. Baker, and no mention of money is made
14	with Mr. Baker, right?
5	A That is correct.
6	A Did you mention to Mr. Hoff that Baker said he
7	would pay?
8	A That's what he called me up for.
9	Q That what?
10	A That is what Mr. Baker called me up for.
11	Q Mr. Glasser, did Mr. Baker say anything to you
12	about money?
13	A Oh, yes, he did.
14	Q At that time, the first meeting?
15	A He said he would be willing to pay, without
16	mentioning a specific amount.
17	Q You didn't testify to that at the first trial,
18	did you?
19	A I testified to whatever is on the record.
20	Ω Did you testify at the first trial that Mr. Bak
21	said to you at the first meeting, "I am willing to pay."?

A I believe I did.

first meeting with Mr. Baker, line 24:

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Q Were you asked this question again and did you

give this answer, page 159 of the record, referring to year

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Was there any reference made to money at that time?

Not at that particular moment, no." Were you asked that question and did you give that answer?

- I certainly did.
- Was it the truth?
- Of course it's the truth.
- After you had this meeting with Mr. Baker, and no reference to any money at that meeting, according to your testimony, you spoke to Mr. Hoff, is that right?
 - That's correct. A
- When you spoke to Mr. Hoff, you told him that Banker wants a small shop for which he would be willing to pay?
 - That is correct. Λ
- Mr. Baker did not tell you anything about being willing to pay, did he?
- He certainly did. No specific amounts mentioned, but he certainly said he was willing to pay.
 - I have just read the record to you.
 - That's exactly what I say there. Λ
 - No reference to money. Q
 - Baker called me up for the specific reason that he

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wanted the privilege of giving out work and for that privilege he was willing to pay, without a specific amount --

- Q You never testified to that amount, did you?

 MR. FRYMAN: Could Mr. Esbitt let the witness
 finish his answers?
- Q I am sorry. Did you finish your answer, Mr. Glasser?
 - A Yes.
- Q You never testified to that in the prior trial, did you?
- A I don't know what -- whatever the record shows, that's what I testified to.
 - Q What did Mr. Hoff say about your request?
 - A He said it would be okay.
 - Ω And then what did you do?
- A Went back to Baker, told him that it would be okay for him to do it.
- Ω You didn't say anything about the union said it was okay; you just said it would be okay, isn't that right?
 - A That it would be okay for him to do it.
 - Q You never mentioned Mr. Hoff's name to Mr. Baker?
- A No, I didn't specifically mention Mr. Hoff's name.
 - Q Or any union official's name?

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Glasser-cross

- A Or any union official's name.
 - O Then did you negotiate a price with Mr. Baker?
- A Didn't negotiate with him any price. He offered \$1,000.
 - Q How much?
 - A \$1,000.
 - Q What did you say?
 - A That it would be -- I went back to Hoff --
 - O Did you say anything to Mr. Baker at that time?
 - A No, I did not.
 - O You are certain of that?
 - A Whatever the record shows, that's what it is.
- Q We want your testimony. I will get to the record in a minute, Mr. Glasser. What is your recollection as to what you said --
- A My best recollection was that I told Mr. Baker it would be okay.
- Q Okay. You said, "Okay, you have a deal," isn't that what you said?
 - A Or words to that effect.
- Q So you had made a deal with Mr. Baker before you had approval of the deal for the amount of money from the union?
 - A I made a deal with Mr. Baker based on Mr. Hoff's

okay.

Q But without any discussion of money with Mr. Hoff at that point.

A No discussion of money.

THE COURT: I think we will interrupt here.

We will resume tomorrow morning at ten a.m.. Please

assemble in the jury room. Please do not form nor express
an opinion about this case. Keep an open mind until you
have heard all of the evidence.

We will see you tomorrow morning at ten a.m.

(An adjournment was taken to Tuesday,

April 2, 1974 at 10 o'clock a.m.)

1						140
2		WITNESS IND	EX			
3	Name		Direct	Cross	Redire	ect Recross
4	Murray L. Bittman		2	25		
5	Jack Glasser	=	36	82		
6		DVIII TND	EV			
7		EXHIBIT IND				In
8	Government		Ident	ificati	on Ev	
	5			L4		15
9	5 6 7			16		16
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ke 1 a.m. ₁ Judge Pierce

UNITED STATES OF AMERICA

V.

73 Cr 616

KARL "JACK" SCHWARTZBAUM

April 2, 1974 10:00 a.m.

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(In open court - jury present.)

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G L A S S E R, resumed the stand

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and testified further as follows:

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THE COURT: Please continue, Mr. Esbitt.

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MR. ESBITT: Yes, sir.

12

CROSS EXAMINATION CONTINUED

13

BY MR. ESBITT:

JACK

14 15 Q Mr. Glasser, yesterday you testified, did you not, that you had received money from a number of your

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members, members you represented, and had not told any

of them that you were keeping part of the money?

17

A Never told it to them.

18

Ω Never told them.

19

A No, sir.

21

Ω And that was the money which you didn't tall the government about either in your income tax return?

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A That's correct.

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Q Did you tell the union officials whom you say you gave part of it to, did you tell those union officials

1	l	Glasser-cross 142				
2		amount of money that you were getting?				
3	A	That I was getting personally?				
4	Q	No, the money that you were getting from the				
5	manufactur	manufacturer.				
6	A	Yes, I did.				
7	Ω	Did you tell them in each case?				
8	A	Individually.				
9	Q	In each case?				
10	λ	In every case.				
11	Ω	In every case?				
13	λ	Yes.				
14	Q	And did you tell the union officials whom you				
15	say you gave some of the money to, did you tell them					
16	much you we	ere keeping?				
17	A	How much I was keeping?				
18	0	Yes.				
19	У	I was keeping my share of it.				
20	Ω	Who determined your share?				
21	У	I did.				
22	Ω union?	With the union's discussing it with the				
23	λ	No. oin				
24	0	No, sir.				
25		So when you say your share, you arbitrarily				
		much you were going to keep and how much you				

SOUTHERN DISTRICT

1	lzv	Glasser-cross 143
2	were going	to give the union officials if you gave them
3	anything?	
4	A	It was not arbitrarily.
5	Q	How did you decide it?
6	A	If there were three involved, I took one-third.
7	If there we	ere four involved, I took one-quarter.
8	Q	And there there were two?
9	A	One-half.
10	Ω	And you made that decision?
11	A	That's right.
12	O	Did you tell the union official in each case
13	how much yo	u were keeping?
14	A	That I personally was keeping?
15	Q	Yes, sir.
16	A	No, sir.
17	Ω	Never told them.
18	А	Never told them.
19	Ď	So they didn't know what share of it you were
20	keeping your	rself?
21	A	I never told it to them.
22	Q	Never told them?
23	Λ	Never told them.
24	V O	I don't think yesterday when I concluded my
25	questioning	of you that we got to Mr. Daniel Ginsberg of

. 1	lzv Glasser-cross 145
2	Association member whom you didn't represent would come
3	
4	MR. FRYMAN: Objection.
5	THE COURT: Sustained.
6	Q Did he mention to you why he came to you?
7	A No, sir.
8	Q Did not?
9	A No, sir.
10	O Isn't it a fact that he came to you because
11	you had a reputation of being a fixer in the industry?
12	MR. FRYMAN: Objection.
13	THE COURT: Sustained.
14	MR. ESBITT: I'm sorry, I didn't hear your
15	ruling.
16	THE COURT: Sustained.
17	Ω Did you tell Mr. Ginsberg what union official
18	you were going to see with respect to this matter?
19	A . I did.
20	Ω When did you tell him that?
21	A At the time that the deal was concluded.
22	O Did you so testify in a prior trial?
23	A Yes, sir.

O By the way, did you check your testimony at the prior trial before you appeared in court today?

24

1	lzv	Glasser-cross 146
2	А	No, sir, I did not.
3	. Q	You did not?
4	A	No.
5	Q	At no time?
6	A	You say the testimony?
7	Q	The transcript of your testimony in the first
8	trial, did	you read it before you came here?
9	A	I read the testimony that I gave in the
10	Scwartzbaum	case but nothing else.
11	Ú	What Schwartzbaum case?
12	Α	The case that is before us now.
13	Ω	You mean last night you read the transcript
14	of yesterda	y's'testimony?
15	λ	Not last night.
16	9.	When?
17	Λ	Yesterday.
18	Q	Who showed it to you?
19	A	I had my notes here. Right in my pocket.
20	Q	May I see them?
21	A	Sure.
22		MR. FRYMAN: I state for the record, your Honor,
23	that the no	tes that Mr. Glasser is referring to have-
24	previously	been marked as Government's Exhibits 3504,

3504A and 3504B and that copies of those notes have been

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previously given to Mr. Esbitt.

MR. ESBITT: May the record reflect also that the witness has merely presented me at this time with 3504A.

THE WITNESS: Here, I have them.

MR. ESBITT: May the record also reflect that the witness has shown me a series of papers with a slip which is no longer annexed to it, marked 3504. Mr. Fryman has referred to 3504B and that has not been produced.

MR. FRYMAN: If you would look at the bottom page, Mr. Esbitt, I believe you will see 3504B.

MR. ESBITT: Sorry.

- Now, when you just testified that you had looked at the prior record in the Schwartzbaum case, had you ever testified in Schwartzbaum's case before?
 - Before the grand jury, yes.
- So you testified before the grand jury about your meetings with Mr. Schwartzbaum?
 - A I did.
- And you testified in the prior trial two months ago, is that right?
 - About the Schwartzbaum case?
- Not about the Schwartzbaum case. ABout your conversations with Mr. Schwartzbaum.

Oh, yes. A

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You did? 0

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Yes.

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I ask you whether before you appeared today,

trial?

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the trial two months ago? Have you?

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I just took my recode from right here.

whether you had read the transcript of your testimony in

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You didn't look at the transcript of the prior

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I don't recall that I did. A

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And you didn't look at the transcript of your

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testimony before the grand jury? I don't know. A

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I have no recollection of that.

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No recollection?

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fied at the prior trial that with respect to Mr. Daniel

But your recollection is clear that you testi-

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Ginsberg, you told him the name of the union official?

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Oh, I'm positive I told it to him.

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You are positive that you testified that you cold it to him?

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I am positive I told it to him.

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My question was, did you testify before Judge Pierce and another jury two months ago, did you testify at

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that time -- testify that you told Mr. Ginsberg the name of the union official?

I don't recall what I testified to two months ago.

- You have no recollection at all?
- No recollection whatsoever.
- I ask you whether or not you were asked this question and gave this answer at the prior trial two months ago before Judge Pierce. Reading from page 205, question by Mr. Sabetta. And this is with respect to Mr. Ginsberg.
- Well, tell us now as best y ou can recall the substance what you said and what he said on this matter.

I told him I had spoken to a party without mentioning a name, who said it would be okay. And we then discussed how much it would cost and he finally said I will pay \$1,000."

Were you asked that question and did you give that answer?

- If the record shows that, then that is the answer I gave.
- Is it not a fact when you testified two months ago, you did not testify that you told Mr. Ginsberg the name of the union official?
 - My recollection was that I did tell it to him

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1	lzv	Glasser-cross	150
2	but if the	record shows there that I did not say s	o at that
3	time, then	it was a slip of my memory.	
4	Ω	Which was a slip of your memory, your	testimony
5	two months	ago or your testimony today?	
6	A	My testimony two months ago.	
7	Q	Was a slip of the memory?	
8	A	Right.	
9	Q	And therefore, not the truth?	
10	A	That was the truth.	
11	. Ω	It was the truth two months ago?	
12	Λ	And it is the truth today.	
13	Q.	That you did not mention the name to	Mr.
14	Ginsberg?		
15	A	If I did not, it was a slip of memory	
16	Q	Your salary during the last few years	that you
17	were emplo	yed by your Association was \$225?	T
18	A	.That's correct.	· ·
19		Take home pay. \$174.35?	

I wouldn't know if it was \$174.32. It was \$225.

Approximately \$174 take home pay?

I have no recollection now of what my take home A pay was.

And during the many years that you were representing manufacturers, 34 years, I believe you said --

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Q I believe you testified yesterday that you received two bottles of whiskey from Mr. Schwartzbaum in December, '69?

A And in previous years.

Q December, 1968?

A In '67 and '68.

Q Did you ever testify before in any trial that you had ever received bottles of whiskey or liquor from Mr. Schwartzbaum?

A I did not.

Q You testified. I believe, that when you received money from Mr. Schwartzbaum, if you did, you would take half of it and give it to Mr. Hoff and whisper "Schwartzbaum"?

A I didn't whisper. I said it to him.

Q You didn't say it in a loud voice so people could hear?

A I didn't shout it from the rooftops, no.

Q You didn't want anybody to know, did you?

A I didn't care for anybody else to know.

Q Did you share the bottles of whiskey with him?

A Oh, no, that was personally for me.

Q That was for what?

A I say that was given to me personally.

A I don't recall that. I was asked that question.

I just cannot recall whether I did or I did not. I have no recollection of getting it and I wouldn't swear that I did not get it.

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1970?

A Well, if Mr. Schwartzbaum will state now that he gave it to me, I will accept his word that he did. I have no memory that I got it.

MR. ESBITT: If your Honor please, I not only move to strike it out but I must move for a mistrial because he has no right to make that statement, and he knows it.

THE COURT: Denied. Strike it out.

Q We are trying to test your truthfulness, you know that, don't you, in a trial of this type?

THE COURT: Just ask the questions.

- O Do you have at this moment any recollection of your testimony before the grand jury as to whether or not you testified that you received a payment from Mr. Schwartzbaum in 1970?
 - A I believe I testified that I may have received --
 - Q May have?
 - A May have.
- Q Were you asked this question and did you give this answer, from page 16 of the grand jury record, Mr. Frynan: "BY MR. HINCKLEY:
- "Q So that would be three payments of \$300 in '68, three payments of \$300 in '69 and one or more payments in 1970?
 - "A One in 1970."

Did you so testify?

A If that's what's on the record, that's what I testified to.

Q Was it the truth?

A Well, I say I have no -- I was not 100 percent sure.

Q Did you tell the grand jury that you were not 100 percent sure?

A I believe I said that I was uncertain about the 1970 payments. I believe I said that to the grand jury.

O That you were uncertain?

A That I was not sure that I received a payment in 1970.

Q I show you Exhibit GX 3505 for identification which has been marked in another trial and ask you to read your grand jury testimony and tell this jury whether you told the grand jury that you were uncertain about the payments in 1970.

A Well, that's what it says here. It says one in 1970.

Ω Does it say anywhere in there that you weren't sure?

A I don't recall this here at all.

O You have it in front of you now. Please read it.

1	lhk	Glasser - cross	157
2	A	I see. It says one in 1970.	
3	Q	Is it still your testimony that you told	the grand
4	jury that	you were uncertain?	
5	A	I believe I did.	
6	Q	But it doesn't appear in the record?	
7	A	There are a lot of things in this record	that
8	are not a	ccurate.	
9	Q	There are a lot of things in the testimony	y before
10	the grand	have you read that testimony?	
11	Α	No.	
12	Ó	Why do you say it is inaccurate?	
13	A	I just looked it over, and there is inacco	racies
14	there, mi	sspelled names, and all that.	
15	Q	Let's not talk about misspelled names. Wh	nat
16	inaccurac	y of fact do you find in that record?	
17	Α	The inaccuracies I find is that one in 197	70. I
18	don't bel:	ieve I said that.	
19	Q	Did you ever see the indictment in this ca	ise?
20	λ	The indictment?	
21	Ω	Yes.	
22	A	No, I did not.	
23	0	Was the indictment ever discussed with you.	in this
24	case?		
25	λ	Not that I know of. No.	

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Q Weren't you told by either Mr. Sabetta or Mr. Frymathat the indictment charges that a payment was made by Mr. Schwartzbaum to you in 1970?

A Not that I know of.

O They never told you that?

A I don't recall that being told to me at all.

Q You testified -- what about Mr. Sherman, did you receive any money from Mr. Sherman in 1970?

A I don't recall getting anything from him in 1970, no, sir.

Ω Did you testify before the grand jury with respect to receiving money from him in 1970?

A My best recollection is that I testified before the grand jury that I was uncertain about any event of 1970.

I just could not be sure of anything at all in 1970.

O So far you looked at the grand jury testimony with respect to Mr. Schwartzbaum and you think the grand jury stenographer was in error in failing to transcribe what you testified to?

A I don't know what he did.

Q You do recall that you testified before the grand jury with respect to Mr. Sherman, did you not?

A Oh, ves.

O Were you asked these questions and did you give

SOUTHERN DISTRICT COURT BEPORTEDS

don't recall whether any monies were paid to me in 1970.

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Now I will read further questions that follow that:

"Q And what was that understanding?

"A The understanding that we had was that
Sherman Brothers would pay to me \$1,000 a year for the
purpose of the firm being permitted to give out contracting
which under the contract that was in effect with the union.
was prohibited.

"Q And did you receive that thousand dollars?

"A I did.

"Q Per year?

"A I did."

Were those questions asked of you and did you give those answers?

A No. sir --

MR. FRIMAN: Your Honor, I object to this --

MR. ESBITT: Your Honor, I want an answer to

chis.

THE COURT: Just one moment, please.

MR. FRYMAN: I object to this question. It seems to me this is totally collateral.

THE COURT: Objection sustained.

O Were you asked about payments to Mr. Hessel in

MR. FRYMAN: Objection.

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who were my superiors visited my home while I was convalescing from my illness.

- Q You had a conversation with them?
- A No. They had a conversation with me.
- Q Did you say anything?
- A They asked me questions.
- Q Did you answer the questions?
- A I denied having --
- O Please, did you --
- A Yes, I did.
- What were the questions they asked you?
- A They asked me whether I had received monies and they specifically named manufacturers, including Mr. Schwartz-baum.
 - Q And what did you say?
- A I at that time denied getting money from anybody, including Mr. Schwartzbaum.
- Q Did they ask you whether or not you had paid any money to union officials?
 - A They did ask me that.
 - Q What did you say?
- A I denied paying any money to anybody because I had not received any money. That's what I had told them.
 - O And that was not the truth?

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Glasser - cross

163

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- A At that time that was not the truth.
- 3
- Q You didn't deny these charges or these statements at any other time?
- 4
- A At any other time after that?
- 6

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- Q Yes.
- 7

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- A No, I did not deny it once I appeared before Mr.. Hinckley.
- 9
- Q When did you come back to work?
- 10
- A I never did come back to work.
- 11
- Q I understand that you did go back to work one morning in September, is that right?
- 12

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- A I reported one morning in September and an hour
- 14
- Q An hour later you were fired?
- 15 16
- A I was retired.

later I was on my way out.

- 17
- Q You were retired?
- 18
- A Yes.
- 19
- Q Did you have a conversation with anyone that morning before you were retired?
- 20
- A Yes, I did.
- 22
- Q With whom?
- 23
- A With three -- Mr. Greenberg, who was my superior and three members of the executive committee.
- 24

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O Did they ask you whether or not you had received

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any money from manufacturers?

- A They did.
- 0 What did you tell them?
- A Well, you want me to tell the whole story or just that part of it?
 - Q Whatever you would like to tell us.
- A They offered me \$15,000 as a bribe to tell them who I was dealing with in the union and I --
 - O They did say that to you?
 - A They offered me \$15,000 to tell --
- Q Did you report that bribe to anybody?
- A Did I report it?
- 14 Q Yes.
- 15 A I didn't get it.
- 16 Q The offer of a bribe, did you report it to anybody?
 - A Yes, I did.
 - Q When?
 - A When? When I was questioned.
- 21 Q When were you questioned? Two years later?
- 22 A That is right.
 - O An offer of a bribe, you tell this jury, was made to you by Mr. Greenberg?
 - A Mr. Hecht.

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1	1hk	Glasser - cross 165
2	Q	Mr. Hecht, Mr. Greenberg, your superiors?
3	A	Right.
4	Q	And that was in September of 1970?
5	A	That is correct.
6	. Q	And you did not report that bribe to anybody
7	until you	were questioned two years later?
8	A	That is correct.
9	Q	Were you asked by them at that time whether or
10	not you h	and received money from any manufacturers?
11	Α	From manufacturers?
12	0	Yes.
13	Λ	They knew, they had
14	Q	Please, answer the question.
15	A	The answer is yes.
16	Q	Pid they ask you at that meeting?
17	A	They did.
18	Q	What was your answer?
19	λ	They enumerated names. They gave me names.
20	Q	What was your answer?
21	Α	I denied it.
22	Ó	So that's a second denial?
23	А	Well, that was I call that the same one.
24	Q	That was the second denial, was it not?
25	Α	That's right.

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PAUL J., CURRAN
U.S. ATTORNEY
SO.DIST.OFN.Y.

